

**ENERGY EMPLOYEES WORKERS'  
COMPENSATION: EXAMINING  
THE DEPARTMENT OF  
LABOR'S ROLE IN HELPING  
WORKERS WITH ENERGY-  
RELATED OCCUPATIONAL  
ILLNESSES AND DISEASES**

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**HEARING**

BEFORE THE  
SUBCOMMITTEE ON WORKFORCE PROTECTIONS  
OF THE

COMMITTEE ON EDUCATION  
AND THE WORKFORCE  
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

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**ENERGY EMPLOYEES WORKERS'  
COMPENSATION: EXAMINING THE  
DEPARTMENT OF LABOR'S ROLE IN  
HELPING WORKERS WITH ENERGY-  
RELATED OCCUPATIONAL ILLNESSES AND  
DISEASES**

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**Thursday, October 30, 2003  
U.S. House of Representatives  
Subcommittee on Workforce Protections  
Committee on Education and the Workforce  
Washington, DC**

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The Subcommittee met, pursuant to notice, at 11:14 a.m., in room 2181, Rayburn House Office Building, Hon. Charlie Norwood [Chairman of the Subcommittee], presiding.

Present: Representatives Norwood, Kline, Blackburn, Owens, Kucinich, and Woolsey.

Also Present: Representative Wamp.

Staff Present: Stacey Dion, Professional Staff Member; Kevin Frank, Professional Staff Member; Ed Gilroy, Director of Workforce Policy; Don McIntosh, Staff Assistant; Christine Roth, Professional Staff Member; Deborah L. Samantar, Committee Clerk/Intern Coordinator; Kevin Smith, Senior Communications Counselor; Maria Cuprill, Minority Legislative Associate/Labor; Margo Hennigan, Minority Legislative Assistant/Labor, and Peter Rutledge, Minority Senior Legislative Associate/Labor.

Chairman NORWOOD. A quorum being present, the Subcommittee on Workforce Protections of the Committee on Education and the Workforce will now come to order.

We are meeting today to hear testimony on energy employees' Workers' Compensation, examining the Department of Labor's role in helping workers with energy-related occupational illness and disease.

Under Committee rule 12(b), opening statements are limited to the Chairman and the Ranking Minority Member of the Subcommittee. Therefore, if other Members have statements, they may be included in the hearing record.

With that, I ask unanimous consent for the hearing record to remain open for 14 days to allow Members' statements and other extraneous material referenced during the hearing to be submitted in the official hearing record.

Without objection, so ordered.

**STATEMENT OF HON. CHARLIE NORWOOD, CHAIRMAN, SUB-COMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE**

I would like to welcome everyone, and thank our distinguished witnesses for coming to testify on this very important subject.

We are here today to learn about the energy employees' occupational illness compensation program. This program is important because it provides compensation to Americans who suffer from illnesses as a result of work performed in the production and testing of U.S. nuclear weapons.

Our hearing today will focus on the Department of Labor's role in administering important worker benefits under the law.

The Energy Employees' Occupational Illness Compensation Program Act of 2000 is administered today by four agencies, including the Departments of Labor, Energy, Health and Human Services, and Justice. No wonder it is taking so long. However, the Departments of Labor and Energy are responsible for the claims and review processes that provide workers with compensation and benefits.

Eligible workers may file a claim for compensation and benefits from either of the Departments or both, if they meet certain criteria. For the purposes of this hearing, we will only examine Subtitle B of the Act, which is administered by the Department of Labor.

The Department of Labor's program provided direct, lump sum, \$150,000 compensation payments, plus medical benefits, for eligible employees of the Department of Energy and its contractors and subcontractors who have developed cancer and other serious diseases because they were exposed to radiation, beryllium, or silica, in the course of doing their jobs.

Also, lump sum payments of \$50,000 and prospective medical benefits are paid to some workers who are eligible for benefits under the Radiation Exposure Compensation Act. Specified survivors of covered employees are also entitled to receive compensation.

The Department of Labor began processing claims on July 31, 2001. Although the program is complicated, it is important for the program to be administered efficiently, and for the claims process to be as user-friendly as possible.

I am pleased to note that the Department of Labor has been successful in administering and adjudicating the claims filed by thousands of American workers. So far, 48,311 claims have been filed with the Department of Labor, and approximately \$674 million in compensation has been paid to employees as of October 31, 2003.

Today's hearing will allow us to examine the overall effectiveness of the Department of Labor's role in this Workers' Compensation program, and whether the claims processing, communication, and payment procedures for eligible employees have been sufficient in meeting their needs and furthering the goal of this program.

We have a significant amount of technical information to discuss today, so I am anxious to hear from our witnesses. I look forward to discussing the issues related to these processes with my col-

leagues on this very important compensation program for our dedicated Department of Energy employees.

I will now yield to the distinguished Ranking Minority Member from New York, Major Owens, for whatever opening statement he may wish to make.

[The statement of Chairman Norwood follows:]

**Statement of Hon. Charlie Norwood, Chairman, Subcommittee on Workforce Protections, Committee on Education and the Workforce**

I'd like to welcome everyone and thank our distinguished witnesses for coming to testify on this very important subject. We are here today to learn about the Energy Employees' Occupational Illness Compensation Program. This program is important because it provides compensation to Americans who suffer from illnesses as a result of work performed in the production and testing of U.S. nuclear weapons. Our hearing today will focus on the Department of Labor's role in administering important worker benefits under the law.

The Energy Employees' Occupational Illness Compensation Program Act of 2000 is administered by four agencies, including the Departments of Labor, Energy, Health and Human Services, and Justice. However, the Departments of Labor and Energy are responsible for the claims and review processes that provide workers with compensation and benefits. Eligible workers may file a claim for compensation and benefits from either the Departments, or both, if they meet certain criteria. For purposes of this hearing, we will only examine Subtitle B of the Act which is administered by the Department of Labor.

The Department of Labor's program provides direct, lump sum \$150,000 compensation payments plus medical benefits for eligible employees of the Department of Energy and its contractors and subcontractors who developed cancer and other serious diseases because they were exposed to radiation, beryllium or silica in the course of doing their jobs. Also, lump-sum payments of \$50,000 and prospective medical benefits are paid to some workers who are eligible for benefits under the Radiation Exposure Compensation Act. Specified survivors of covered employees are also entitled to receive compensation.

The Department of Labor began processing claims on July 31st, 2001. Although the program is complicated, it is important for the program to be administered efficiently and for the claims process to be as user-friendly as possible. I am pleased to note that the Department of Labor has been successful in administering and adjudicating the claims filed by thousands of American workers. So far, 48,311 claims have been filed with the Department of Labor and approximately \$674,000,000 in compensation has been paid to employees as of October 23, 2003.

Today's hearing will allow us to examine the overall effectiveness of the Department of Labor's role in this workers' compensation program, and whether the claims processing, communication, and payment procedures for eligible employees has been sufficient in meeting their needs and furthering the goal of this program.

We have a significant amount of technical information to discuss today, so I am anxious to hear from our witnesses. I look forward to discussing the issues related to these processes with my colleagues on this important compensation program for our dedicated Department of Energy employees.

And, I now yield to the distinguished Ranking Minority Member from New York, Mr. Owens, for whatever opening statement he wishes to make.

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**STATEMENT OF HON. MAJOR OWENS, RANKING MEMBER, SUBCOMMITTEE ON WORKFORCE PROTECTIONS, COMMITTEE ON EDUCATION AND THE WORKFORCE**

Mr. OWENS. Thank you, Mr. Chairman. I also want to thank all of today's witnesses for being here this morning. I particularly want to thank Don Elisburg. He is here at my request, and I know that he has traveled across the country in order to be here.

I want to commend Chairman Norwood and also Committee Chairman Mr. Boehner for scheduling this hearing. This is a Committee that is supposed to have expertise for Workers' Compensation programs generally. As the primary oversight Committee for

both NIOSH and the Department of Labor, this is a Committee that comes the closest to having primary jurisdiction for the Energy Employees' Occupational Illness Compensation Program Act. I will refer to it from here on as the Act.

However, beyond unsuccessfully opposing enactment of this Act, this Committee had virtually no role in the enactment of this legislation, and despite the fact that the Act was passed 3 years ago today, this is the first hearing on the program, and in my view, this kind of recalcitrance borders on negligence, so I commend the Chairman for scheduling this hearing.

The Act authorizes compensation for workers who are injured as a result of being employed to develop and build nuclear weapons. For decades, the U.S. Government has hid and misled the extent to which these workers were being poisoned, and spent millions of dollars fighting allegations that the production of nuclear weapons was jeopardizing workers' health.

According to the GAO, in 1992 alone, the Energy Department spent \$40 million defending contractors from litigation brought by sick workers. We are talking about workers who literally risked their lives defending the nation, but who were lied to, misled, and cheated by their government. This is the background that led to the enactment of the Energy Employees' Compensation Act.

We routinely refer to this program as a Workers' Compensation program, but I think it is a mistake, that reference is a mistake. This program has very little in common with traditional state Workers' Compensation laws. In my view, it makes much more sense to view this as a reparation program, because that is what it really is.

The intent of the Act is to provide a very modest benefit, \$150,000 and medical benefits, if the injured worker is still alive—and too many are not—to all nuclear energy workers after the survivors have developed radiation-induced cancers and illnesses.

The program was never intended to be limited only to those workers employed at gaseous diffusion plants.

The real credit for the passage of this landmark legislation goes to people like Clara Harding, the widow of Joe Harding, who died a slow and painful death from stomach cancer in 1980. Joe Harding worked for Union Carbide at the Energy Department's uranium enrichment plant in Paducah, Kentucky. After 17 years on the job, Joe Harding found himself 50 years old with no job, no stomach, a crippled leg, bad lungs, no way to get a job, and no compensation for his injuries.

Clara Harding had to sell her house and supported herself by babysitting for 20 years before ever receiving any compensation for her husband's death.

The purpose of this program is to ensure that other families, including families in Hanford, Washington; Rocky Flats, Colorado; Niagara Falls, New York; and Savannah River, South Carolina, as well as those in Paducah, Kentucky and Portsmouth, Ohio, do not face the inhuman and horrific treatment that the government afforded Mrs. Harding and her husband.

Unfortunately, based on information I have received concerning the experiences of workers in Niagara Falls, it appears that these workers are still not being treated as they deserve.



Judith Anne Cinelli is a widow of a former atomic worker in Niagara Falls, New York. She filed her claim on September 21, 2001. She has yet to be interviewed by NIOSH. The Department of Labor denied her claim because her husband's dates of employment were outside the covered period. This is how Mrs. Cinelli describes her experience: At the time, it was not common knowledge of the dangers of radiation. He died in my arms of lung cancer 6 weeks after diagnosis at age 60.

It is haunting to think of the innocent people only trying to make a living with the specter of a silent killer hanging over them. So an early death was the ultimate consequence of working in buildings contaminated by residue from the Manhattan Project just a few years prior.

Of course, it was devastating to lose the love of your life after 39 years of marriage. Frank never even retired after a life of working to care for our family of four children who adored him.

It causes a great deal of anguish to think that our government won't care for our own. It is not that large of a dollar amount for a loss of life, for suffering from untold cancers. This compensation needs to be paid for a token justice to the losses suffered by those who toiled there year after year.

Losing Frank has brought heartache to me, our four kids, and their spouses, and also our 12 grandchildren and many friends. That sadness is enough to bear, but to live with the knowledge that there are bad people who know that this is the right thing to do and are trying everything humanly possible to prevent those waiting for years for this to come to closure is sickening and disgusting, at best. Those in power trying to deny this will probably never experience the frustration and loss the likes of us have, and as angry as I am, I pray they never do.

Thomas J. Catanzaro is a former atomic worker at Niagara Falls, also. He filed a claim on August 2, 2001. He also has not heard from NIOSH. He worked at Lake Ontario Ordnance Works in 1957 as a laborer, and has been told by the Department of Energy that they are having trouble finding his former employers because a few went out of business.

This is how he describes his experience, and I will close after this, Mr. Chairman.

I got colon cancer and a colostomy done in 1969 at the age of 32. The doctors said that was unheard of at my age. I could not have any more children. My recovery took a long time. I missed out on all the things a father enjoys with his sons and the relations a man has with his wife.

When I called to find out the status of my claim, I was told by a worker at DOE there were people that were far more deserving than myself. I have been on disability and have been living very frugally for a long time.

To know that there is compensation for wallowing in a radioactive dump during that time and being made to wait all this time is very frustrating. It is impossible to condense all the things that I lost at the age of 32 until now. I couldn't provide for my family as I would have liked, watching my wife having to work two jobs to supplement our income. The list could go on forever. There must

be a way to speed this process along. I have watched two of my co-workers on that job die this year.

Mr. Chairman, notwithstanding the passage of the Act, these workers continue to feel that their government is at best ignoring them, and at worst, betraying them.

This is a problem that must be addressed.

Mr. Chairman, I have a number of documents I would like to submit for the record. These claimant statements that have been submitted to me by Congresswoman Louise Slaughter, who represents that area of Niagara, and also articles from a July/August 2001 issue of the Bulletin of Atomic Scientists, describing the enactment of the Act and the circumstances that led to its enactment.

Additionally, Mr. Chairman, there are written questions that I would like to submit to NIOSH and the Department of Labor after the hearing for inclusion in the hearing record.

I ask unanimous consent to be able to do so.

Chairman NORWOOD. Without objection, so ordered.

Chairman NORWOOD. Thank you, Mr. Owens.

Let me make a little point here. This is a very bipartisan effort. There are people on both sides of the aisle that are particularly interested in this subject, and Mr. Owens has just mentioned two Democrats, or at least one, Louise Slaughter, and Congressman Strickland is also very interested in this subject. I notice my buddy from Tennessee, Congressman Zack Wamp, is here. Obviously, he is very interested in this subject with Oak Ridge, and your Chairman is extremely interested in this subject, in that I represent a lot of people that work at the Savannah River site.

It is always a pleasure for me to be able to deal with a subject in which there is bipartisan support. Mr. Owens, I think with enough of us pushing, we are going to try to get this thing improved greatly.

I thank you for your opening statement, and I would now like to introduce our panel of witnesses for this morning's hearing.

First, we will hear from Mr. Shelby Hallmark. Mr. Hallmark was named as the Director of the Office of Workers' Compensation Programs—in Washington-speak, OWCP—on June 18, 2001. He served as acting director on two occasions, February 1996 through November 1997 and December 1999 through 2001. Previously, he has been the OWCP deputy director since February 1990.

Mr. Hallmark's career in the Department of Labor began actually in 1980. He held a series of positions in the former Standards Administration Office of Management Administration and Planning, culminating in his service as that of Office Director from 1987 to 1990. He was appointed then to the Senior Executive Service in 1988.

Mr. Hallmark, we certainly welcome you and thank you for giving us your time.

Incidentally, Mr. Shelby Hallmark served in a collateral capacity as Chair of the Secretary of Labor's strategic and performance planning work group in 1998, and led the development of the Department's 1999 through 2004 strategic plan and its 2000 annual performance plan.

Our second witness is Dr. John Howard. Dr. Howard is Director of the National Institute for Occupational Safety and Health in the U.S. Department of Health and Human Services in Washington.

Prior to his appointment as Director of NIOSH, Dr. Howard served as Chief of the Division of Occupational Safety and Health in the California Department of Industrial Relations from 1991 through 2002.

Dr. Howard is board-certified in internal medicine and occupational medicine, and has a list of degrees as long as my arm. He is admitted to the practice of medicine and law in the State of California and the District of Columbia, and he is a member of the U.S. Supreme Court Bar.

He has written numerous articles on occupational health law and policy, and how you had time to get out of school is beyond me.

Our final witness, Don Elisburg—we have met before, haven't we? Don Elisburg is an attorney representing the AFL-CIO and the Building and Construction Trades Department of the AFL-CIO. He testified in support of the legislation that ultimately became EEOICPA before the Congress, and specifically in support of assigning the program to the Secretary of Labor while the legislation that became EEOICPA was under consideration in the year 2000.

He was also a member of the Workers' Advocacy Committee of the Department of Energy from January 2001 through December 2002. That advisory committee was appointed to assist the Department of Energy in implementing its responsibilities under the EEOICPA.

He was Executive Director of the Occupational Health Foundation from 1986 to 1991, and he is former general counsel and staff director of the U.S. Senate Committee on Labor and Human Resources. Mr. Elisburg was Assistant Secretary of Labor from 1977 through 1981.

We welcome and thank you all. Before the first panel begin their testimony, I would like to remind Members that we will be asking questions after the entire panel has testified. In addition, Committee Rule 2 imposes a 5-minute limit on all questions. I ask that none of you embarrass me by going over 5 minutes. I do not like to ask people to stop. If you will do it on your own, I would be grateful.

The lights in front of you, gentlemen, I think you all know, they are red, green, and caution. That is giving you some indication as to when your 5 minutes is up, and if you will help with that, I will be very grateful.

With that, I would like to now recognize Mr. Hallmark for 5 minutes.

**STATEMENT OF SHELBY HALLMARK, DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, EMPLOYMENT STANDARDS ADMINISTRATION, U.S. DEPARTMENT OF LABOR**

Mr. HALLMARK. Thank you, Mr. Chairman, and Members of the Subcommittee. I am the Director, as the Chairman indicated, of the Office of Workers' Compensation Programs within the Employment Standards Administration, within the Department of Labor (DOL). Mr. Elisburg was my boss back in 1980 when I came to Labor.

I am pleased to have the opportunity to appear before the Subcommittee this morning to discuss the progress DOL has made in implementing Part B of the Energy Employees' Occupational Illness Compensation Program Act, which we like to call EEOICPA.

It is appropriate exactly 3 years after its passage that we review progress to date. DOL was assigned primary responsibility for administering and adjudicating claims under Part B of the Act, and for getting it up and running by July 31, 2001.

We achieved that goal, and the first payment was made to Clara Harding, presented by Secretary Chao on August 9, 2001. Since then, the Department of Labor has taken in almost 48,000 claims. We have conducted nearly 600 public meetings around the country. We have established ten resource centers jointly with the Department of Energy to inform claimants about this program and help them file. We have established four district offices in Jacksonville, Cleveland, Denver, and Seattle, and the infrastructure to support those offices, so that we can process cases. We have issued over 34,500 case decisions, and awarded almost \$700 million in compensation and medical benefits.

I would like to quickly go through who is eligible under the program, and I have a chart over here that diagrams our process.

First of all, there are two fundamental tests. One, you must have been employed under what we call a covered employment situation, and you must have a covered illness. Covered employment means the Department of Energy or related facility, during a covered time period when nuclear weapons were being produced, and the covered illness means radiation-induced cancer, beryllium disease, or for miners at test sites, chronic silicosis.

Walking through the process—there is a copy of this chart in your packets, it might make it a little simpler to understand this complex process.

Claims go first to your district offices in Jacksonville, Cleveland, Denver and Seattle. They develop the claim to determine whether there is covered employment or covered medical condition. That is the "evidence developed" in the far right-hand corner. Once they have determined there is a covered condition, that determines the processing. There are five different kinds of cases that we deal with.

The first is beryllium disease. The second is silicosis. The third is actually RECA coverage, that is that supplemental payment that we make for people who receive benefits from the Department of Justice. The fourth is a specified cancer that relates to the designated special exposure cohorts, where there is a presumption of causation, and the fifth is the radiation-induced cancer, where there needs to be a causation determination by our friends at NIOSH.

The first four cases we can take immediately from when we have that block saying what is the covered condition, to a recommended decision in our district offices, that block right in the middle of the chart.

At that point, a decision is issued to the claimant. The claimant may agree or object. If they object, we will have a hearing, and then a final decision will apply to the case.

If it's not one of those four types of cases, if it is a cancer that requires a causation determination, then the case must be prepared and submitted to NIOSH for a dose reconstruction to determine what in fact was the nature of their cancer, the causation of their cancer.

Once that decision is made, once NIOSH completes its report, it comes back to us, the probability of causation box, we determine using a regulation that NIOSH also developed for us, whether or not it is at least as likely as not that the cancer was in fact caused by the radiation on the job. That then flows back to the recommended decision box, and then the claim proceeds the same for those cases as it would for the others.

For 2002, we set up our performance goals under GPRA for this program to get us to the middle of that chart within 120 days for simple cases and 180 for the more difficult cases. We did not make that because of the backlog we had starting the program, but I am happy to say that we got to 48 percent instead of 75.

In 2003, we did meet those goals. We have cleared the backlog. There are only approximately 7 weeks of incoming cases awaiting processing in the Department of Labor, and I believe that is what I consider to be a credible and working system at the present moment, and we hope a user friendly one as well.

The coming year faces us with a challenge of receiving back the masses of cases that have been transferred to NIOSH and processing them through the recommended and final decision process. We will also be working to reach out to the public to make sure that everyone who is eligible for this program knows about it and can file a claim if they so choose.

I would be glad to answer questions at the end of this session.  
[The prepared statement of Mr. Hallmark follows:]

**Statement of Shelby Hallmark, Director, Office of Workers' Compensation Programs, U.S. Department of Labor**

Mr. Chairman, and Members of the Committee, my name is Shelby Hallmark, Director, Office of Workers' Compensation Programs (OWCP), part of the Employment Standards Administration (ESA), within the Department of Labor (DOL). OWCP is responsible for administering four major disability compensation programs which provide wage replacement benefits, medical treatment, vocational rehabilitation and other benefits to certain workers or their dependents that experience work-related injury or occupational disease.

I am pleased to have an opportunity to appear before the Subcommittee today to discuss the progress DOL has made in implementing Part B of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). It is appropriate, exactly three years after its enactment, that we review our progress to date in meeting this challenge.

As you know, under Executive Order 13179, DOL was assigned primary responsibility for administering and adjudicating claims for compensation for cancer caused by radiation, beryllium disease and certain other conditions under Part B of the Act, and for ensuring that the program was up and running by July 31, 2001. Since funding for the new program was not received until January 2001, DOL faced a major initial challenge just to meet the congressionally mandated start date. We succeeded in issuing interim final regulations in May of that year and established a fully functioning program on schedule. The first payment was presented by Secretary Chao on August 9, 2001. Since then, DOL has taken in almost 48,000 claims, conducted about 575 public meetings to inform potential claimants of the program and help them file claims, established 10 permanent resource centers in the locations where most potential claimants reside, established four DOL district offices and the infrastructure to support them, issued decisions in over 34,500 cases and awarded almost \$700 million in compensation and medical benefits.

Employees who worked for the Department of Energy (DOE), one of its contractors or subcontractors at a DOE facility, or at a facility operated by a private company designated as an Atomic Weapons Employer or a beryllium vendor, may be eligible for a lump-sum award and future medical benefits under Part B of the Act. Survivors of these workers may also be eligible for benefits. Part D of the Act established a system under which employees whose occupational diseases are found by a panel of independent physicians to have been connected to work-related exposure to toxic substance receive assistance in obtaining state workers compensation benefits.

Under the Executive Order, four agencies have responsibility for administering the Act, DOL, DOE, the Department of Health and Human Services (HHS), and the Department of Justice (DOJ). The DOL, as the lead agency, determines eligibility for compensation and medical expenses for those conditions covered by Part B of the Act. The DOE provides employment verification to DOL relevant to claims under Part B, provides worker exposure information to the Department of Health and Human Services for its use in making estimates of the radiation received by a covered worker, administers Part D of the Act, and designates private companies as atomic weapons employers and additional beryllium vendors. DOL and DOE jointly manage the ten outreach centers aimed at informing potentially eligible workers or their survivors about the EEOICPA programs.

HHS establishes procedures for estimating radiation doses, develops guidelines to determine the probability that a cancer was caused by the exposure to radiation, estimates radiation doses (dose reconstruction), determines additions to the Special Exposure Cohort, and provides support for the Advisory Board established by the Act. And finally, the Department of Justice notifies uranium workers eligible for benefits under the Radiation Exposure Compensation Act (RECA) that they may also receive compensation from the Department of Labor and provides DOL with documentation concerning those claims.

Several requirements must be met for a claimant to be eligible for compensation under the EEOICPA. For a worker (or eligible survivor) to qualify for benefits under Part B, the employee must have worked at a covered DOE, Atomic Weapons Employer, or beryllium vendor facility during a covered time period and developed one of the specified illnesses as a result of their exposure to radiation, beryllium or silica. Covered medical conditions include radiation-induced cancer, beryllium disease, or chronic silicosis (chronic silicosis is only covered for individuals who worked in nuclear test tunnels in Nevada and Alaska). Covered workers receive a one time lump-sum payment of \$150,000 as well as medical treatment for the covered condition (medical services and evaluations only for beryllium sensitivity). The EEOICPA also provides compensation in the amount of \$50,000 to individuals (or their eligible survivors) awarded benefits by the DOJ under Section 5 of the Radiation Exposure Compensation Act (RECA).

Allow me to briefly explain how claims filed with DOL are processed. When a claim is filed, it is assigned to one of our four District Offices—Jacksonville, FL; Cleveland, OH; Denver, CO; or Seattle, WA—based on geographical location of the covered worker's last employment. It is assigned to a claims examiner who will review the documentation and determine if the criteria established by the Act for covered employment and covered illness are met. The claims examiner will work with the claimant, DOE and/or the private employer or employers involved to develop the case file as thoroughly and completely as possible.

There are several different types of claims under Part B of the Act, which require different processing steps. Claims for the \$50,000 RECA supplement are the least complex, involving verification via the Department of Justice that a RECA award has been made, and documentation of the identity of the claimant (including survivor relationship issues). For claims involving beryllium disease, silicosis, or a "specified cancer" for workers at a Special Exposure Cohort (SEC) facility, the employment and illness documentation is evaluated in accordance with the criteria in the EEOICPA. The DOL district office will then issue a recommended decision to the claimant. The claimant may agree with the recommended decision, or may object and request either a review of the written record or an oral hearing (the latter will normally be held at a location near the claimant's residence). In either case, the Final Adjudication Branch (a separate entity within the DOL's Office of Workers' Compensation Programs) will review the recommended decision and any evidence/testimony submitted by the claimant and will issue a final decision, either awarding or denying benefits (or the Branch may remand to the district office if further development of the case is necessary). A Final Decision can then be appealed to the U.S. District Courts.

DOL can move directly to a decision on cases involving a "specified cancer" at a Special Exposure Cohort facility because the Act provided a presumption that any

of the listed cancers incurred by an SEC worker was caused by radiation exposure. For cases involving a claimed cancer not covered by the SEC provisions (that is, either a cancer incurred at a non-SEC facility, or a cancer incurred at an SEC facility that is not one of the specified cancers listed in the Act), there is an intervening step in the process to determine causation, called "dose reconstruction." In these instances, once DOL determines a worker was a covered employee and that he or she had a diagnosis of cancer, the case is referred to the National Institute for Occupational Safety and Health (NIOSH) so that the individual's radiation dose—the total amount and character of radiation to which the individual was exposed related to his or her employment in the nuclear weapons complex—can be estimated. NIOSH will describe the dose reconstruction process in detail in their testimony.

After NIOSH completes the dose reconstruction and calculates their dose estimate for the worker, DOL takes this estimate and applies methodology also developed by NIOSH in its "probability of causation" regulations, to determine if the statutory causality test is met—that is, whether the individual's cancer was at least as likely as not (at least 50 percent probability) related to covered employment. DOL's district office then issues a recommended decision on eligibility for EEOICPA benefits, which is subject to the same subsequent administrative procedures and appeal rights described above with regard to other claims.

The Department of Labor is committed to measuring the accomplishment of outcomes and holding ourselves accountable for achieving the fundamental goals of all the programs we administer. With respect to the Energy Compensation program, we established high performance standards focused on moving claims rapidly through the initial and secondary adjudication stages. Our Government Performance Results Act (GPRA) goals, even for the first full year (fiscal year 2002), were challenging in light of the large number of first year claims and program start-up activities.

Our goal for initial processing was to make initial decisions in 75 percent of the cases within 120 days for cases from DOE facilities and in RECA claims, and within 180 days for AWE, beryllium vendor, and subcontractor cases (for which employment and other critical information is generally more difficult to obtain). Because we had nearly 30,000 cases on hand to start with, we knew in advance we would not meet those goals, which were conceptualized in terms of a normal, steady-state flow of incoming claims. However, we knew that the customers of this program had been waiting for years for their illnesses to be addressed, and establishing rigorous performance goals signaled to our own staff and to those potentially eligible for benefits that we were committed to efficiently processing claims. In fact, we took timely initial actions (either recommended decisions or referral to NIOSH for dose reconstruction) in about 48 percent of the cases during that first year of operation (fiscal year 2002), despite the backlog of aged cases that we brought into the year. The smaller number of final decisions completed in fiscal year 2002 met our GPRA timeliness goals in 76 percent of cases.

Although we had received over 47,000 Part B claims by the end of fiscal year 2003, we have made recommended decisions or referred to NIOSH for dose reconstructions all of our backlogged cases and currently have a working inventory of only 1500 cases. Further, we met our GPRA goals in fiscal year 2003. Through the efforts of our district office and Final Adjudication Branch staff, we made timely initial decisions in 79 percent of the cases processed, in excess of the 75 percent goal. With regard to final decisions, 77 percent of the decisions were within the program standards, also in excess of the goal of 75 percent. Accomplishment of these goals took the persistent, case-by-case effort of the entire staff of our Division of Energy Employees Occupational Illness Compensation Program, as well as the continuing support of our Solicitor's Office.

DOL has also focused on achieving quality decisions, and on providing clear and effective communications to our customers and stakeholders. The program instituted an intensive Accountability Review process to ensure that samples of case work are scrutinized by objective reviewers, and where quality issues are identified in these samples, to take strong and immediate corrective action. The headquarters staff has developed effective and comprehensive procedural and policy guidance, a difficult task in the context of a new and still evolving compensation program. Although no workers' compensation program is without conflict, the level of appeals has been relatively low.

Since the effective date of the Act, DOL has received 47,844 claims which were filed based on 36,597 individual cases or workers. As of October 23, 2003, we have made recommended decisions or referred the case to NIOSH for dose reconstruction in 95 percent of these cases. There have been over 24,000 Final Decisions issued and nearly \$675 million in compensation payments made to over 9000 claimants. Additionally, nearly \$20 million in medical benefits have been paid. A detailed listing of current program statistics is displayed in attached Program Status Report.

In the coming year DOL is prepared to adjudicate the thousands of cases that will be returned by NIOSH with completed dose reconstructions. We have established a performance goal to issue a recommended decision within 21 days of receiving a dose reconstruction report from NIOSH. We have been exceeding this goal so far. We also have made a commitment to conduct significant outreach efforts to reach as many potential claimants as possible and inform them of the program. These efforts will include a significant number of strategically located traveling resource centers to provide assistance to potential claimants, as well as coordination with pension funds, unions, and other groups which may be able to extend our message about the program to retirees and workers or their survivors who no longer live in proximity to a DOE facility.

In summary, I'm pleased to report that all aspects of the EEOICPA Part B program are fully operational. We believe that we have established a credible program and forged effective working relationships with our partner agencies—DOE, HHS, and DOJ as well as with the DOE contractors and labor unions. For example, DOL and DOE have worked cooperatively to improve the employment verification process and have instituted a number of efficiency measures. These efforts have resulted in the average time for completion of employment verification at DOE facilities to be reduced from nearly 90 days at the beginning of fiscal year 2002 to a current average of less than 45 days. Similarly, the time for corporate verifiers to respond to employment verification has been reduced from about 75 days to the current average of 24 days. DOL and HHS also work in cooperation to improve the efficiency and effectiveness of the transfer of cases and case information of referrals for dose reconstruction. These efforts have resulted in processes that ensure that recommended decisions are issued within 21 days of receipt of the dose reconstruction report from NIOSH.

In addition to the program statistics provided, we have included a summary of information for each member relating to the program in general and to your District specifically. I'll be pleased to answer any questions you may have.

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Chairman NORWOOD. Thank you very much, Mr. Hallmark.

Dr. Howard, we are happy to have your sidekick there, Mr. Elliott, with you. I just want to make sure the Committee understands he is here at your request to help answer questions. You are now recognized for 5 minutes.

**STATEMENT OF JOHN HOWARD, M.D., DIRECTOR, NATIONAL INSTITUTE FOR OCCUPATIONAL SAFETY AND HEALTH, CENTERS FOR DISEASE CONTROL AND PREVENTION, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Dr. HOWARD. Thank you, Mr. Chairman.

I am the Director of the National Institute for Occupational Safety and Health (NIOSH), and our job, as Mr. Hallmark has stated, is to support the Department of Labor in their administration of Part B.

Under Executive Order 13179, issued on December 7, 2000, the President charged HHS with specific responsibilities related to Part B. First, the President charged HHS with assisting a new Federal advisory committee, the advisory board on radiation and worker health, to advise HHS on its activities under Part B. The advisory board is constituted pursuant to the Act, with a balance of scientific, medical, and worker perspectives, and has been exceptionally active in assisting us under the excellent leadership of Dr. Paul Ziemer.

Second, HHS was charged with promulgating two regulations required under the Act. The first one was to establish methods for conducting radiation dose reconstructions for cancer claimants. Dose reconstruction is a science based process for looking back in time and estimating the amounts and the types of radiation doses a person incurred.



The Act also required a second regulation establishing guidelines by which DOL would determine whether the cancer of an employee was at least as likely as not related to the radiation dose estimated for that employee through dose reconstruction.

HHS promulgated both of these regs in final form in 2002, in May of 2002.

The third responsibility of HHS is the development and the administration of the dose reconstruction program for cancer claimants. This is the largest task that we have. The scale and scientific complexity of the dose reconstruction program required by the Act are quite significant in comparison to other Federal compensation programs requiring dose reconstructions.

NIOSH began developing this program in the summer of 2002, and in the 2 years since then, we have created the scientific and management systems and protocols that a program of this size and complexity requires, finalized a contract which provides NIOSH with the services of more than 300 scientists, technicians and administrative support, and made significant progress in obtaining and analyzing extension information required to support those reconstructions, including the development of site surveys, which provide essential information on radiation uses, certain radiation exposures, monitoring practices for a given site, and provide a basic foundation of data for production scale dose reconstructions.

I think there are two important points to note about the development of our program. First, while NIOSH has some of the leading expertise in conducting dose reconstructions for scientific purposes, the practical challenges of conducting dose reconstructions for a compensation program are new to us.

Second, the Department of Energy has had to develop systems for identifying and retrieving records requested by us for individual cases. I think over the past year, DOE has greatly enhanced its capacity to do this.

Where we are at in terms of this day, we have received about 14,000 cases, as Mr. Hallmark has indicated, from DOL. We have made more than 12,000 requests to DOE for data. In addition, we have requested data from other sources for employees of atomic weapons employers.

We have completed dose reconstruction interviews for more than 9,500 claimants and co-workers. We have assigned 1,800 cases to health physicists to conduct the dose reconstructions. We have drafted 250 dose reconstruction reports that are currently being reviewed by the claimants, which have up to 60 days for their review, and we have completed 774 dose reconstructions and returned them to the Department of Labor.

As the summary indicates, we do have a substantial backlog of dose reconstructions to complete. I think this backlog arose in large part because we had to begin accepting dose reconstruction requests in 2001, long before we had the infrastructure or capacity to complete any dose reconstructions.

As of today, we are steadily increasing our capacity to complete dose reconstructions on a production scale, because nearly all of our program development has been completed. We are progressively completing more dose reconstructions each month, and we expect greater increases in the months ahead.

As our capacity for dose reconstruction has increased, the number of new cases requiring dose reconstruction has been decreasing since the fourth quarter of fiscal year 2002.

Fourth, I just wanted to mention our responsibility under Part B concerns making additions to the special exposure cohort. The Department is in final stages of promulgating a regulation that will allow us to implement this authority. This regulation will set out procedures as required by the Act, by which classes of employees can petition HHS for addition to the cohort, and by which HHS will consider such petitions.

In conclusion, HHS and NIOSH are working intensively to meet our responsibilities under the Act. The major tasks have been challenging because they employ dose reconstruction expertise and systems on an unprecedented scale.

We remain keenly aware, however, that the nuclear weapons workforce, their families, are relying on us to accomplish this work as quickly as possible. We understand that doing the best we can is not good enough from the perspective of our claimants, some of whom are dying of cancer or who have lost a spouse, a parent, or a sibling to cancer.

As we proceed, we will try to strive to produce dose reconstructions that are as timely as possible, that are fair, and that are grounded in the best available science.

Thank you, Mr. Chairman. I would be happy to answer any questions.

[The prepared statement of Dr. Howard follows:]

**Statement of Dr. John Howard, M.D., Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services**

Mr. Chairman, and members of the Subcommittee, my name is John Howard and I am the Director of the National Institute for Occupational Safety and Health (NIOSH), part of the Centers for Disease Control and Prevention (CDC) within the Department of Health and Human Services (HHS). I am joined today by Mr. Larry Elliott, Director of the NIOSH Office of Compensation Analysis and Support.

CDC's mission is to promote health and quality of life by preventing and controlling disease, injury and disability. NIOSH is a research institute within CDC that is responsible for conducting research and making recommendations to identify and prevent work-related illness and injury. Within this mission, NIOSH is the lead federal agency for research on the occupational health of U.S. workers, including nuclear weapons workers.

I am pleased to appear before you today to provide testimony on the status of HHS activities under the Energy Employees Occupational Illness Compensation Program Act ("the Act"). Under the Act, HHS, with the assistance of NIOSH, is charged with conducting a variety of compensation-related activities important to nuclear weapons workers and their families. My testimony today will focus on the set of activities we conduct to support the Department of Labor (DOL), which administers the federal compensation program under "Part B" of the Act. I will also briefly summarize other HHS activities under Part D and a separate provision of the Act relating to residual contamination.

Under Executive Order 13179, issued on December 7, 2000, the President charged HHS with five specific responsibilities related to Part B. I will briefly describe each of these five activities and summarize its progress.

**Advisory Board on Radiation and Worker Health**

First, the President charged HHS with administering a new federal advisory committee, the "Advisory Board on Radiation and Worker Health," to advise HHS on its activities under Part B. I will note the specific advisory roles and contributions of the Board in context throughout this testimony.

HHS nominated and the President appointed the initial members of the Board in 2001. The Board is chaired by Dr. Paul Ziemer, an internationally recognized health physicist, and includes 11 members who are scientists, physicians, or representatives of nuclear weapons workers, a membership which reflects the Act's requirement that the Board include a balance of scientific, medical, and worker perspectives.

The Board held its first meeting in January of 2002. The Board has been exceptionally active, having met a total of 18 times in the first 21 months since the beginning of 2002; most recently, on Tuesday and Wednesday of this week in St. Louis.

#### **Regulation for Dose Reconstructions and Cancer Causation**

Second, HHS was charged with promulgating two regulations required under the Act. One regulation established methods for conducting radiation "dose reconstructions" for cancer claimants.<sup>1</sup> Dose reconstruction is a science-based process for retrospectively estimating the amounts and types of radiation doses incurred by a person. Since dose reconstructions for a compensation program are very different from those used in research, HHS developed methods of dose reconstruction that build upon established approaches and principles of this discipline but are tailored to the unique purposes and needs of the Act, particularly striking a balance between the needs for accuracy and efficiency in a compensation program. This effort included substantial scientific work on the part of NIOSH to develop specialized analytical methods and tools needed to estimate the occupational radiation doses of nuclear weapons workers.

The Act required a second regulation to establish guidelines by which DOL would determine whether the cancer of an employee was "at least as likely as not" related to the radiation doses estimated for that employee through a dose reconstruction.<sup>2</sup> This regulation for determining "probability of causation" (the probability that a person's cancer was caused by radiation), required the further development of a scientific tool for calculating probability of causation. This tool, the "Interactive RadioEpidemiological Program," or "IREP," is a complex computer program that uses "risk models" for associating radiation doses with risk information on different cancers. This tool estimates the probability of disease causation specific to each employee's unique history of exposures to different types and quantities of radiation during the course of his or her employment. The final development of this tool was undertaken by NIOSH in collaboration with the National Cancer Institute, which had created the initial version of this tool in the 1980s, and was in the process of updating it as a result of an extensive scientific review by the National Research Council.

HHS promulgated both of these regulations in final form in May 2002, after issuing a notice of proposed rulemaking for the probability of causation regulation and an interim final rule for the dose reconstruction regulation in October of 2001 and obtaining and

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<sup>1</sup> 42 CFR part 82

<sup>2</sup> 42 CFR part 81

considering public comments. The Board also reviewed and advised HHS on both of these rules during the public comment period and supported the final rules. The rules are based on the best available scientific evidence and have widely employed a "benefit of the doubt" policy to ensure that important limitations of science and available data are handled in ways that do not penalize the claimant. The rules are designed with efficiencies necessary to serve the high claims case load expected then, and experienced now. The rules also are designed in recognition of the fact that science is always improving. Hence, the rules allow for new scientific findings and consensus to be integrated into dose reconstruction methods and probability of causation determinations as they become available, after proper scientific consideration.

#### **Dose Reconstruction Program**

The third responsibility of HHS, delegated to NIOSH, is the development and administration of a program of dose reconstruction to serve cancer claimants under the Act. This is the largest task assigned to HHS. The production scale and scientific complexity of the dose reconstruction program required by the Act are significant compared to other federal compensation programs requiring dose reconstructions.

I will report on the progress of this dose reconstruction program in two parts. First, I will outline the major milestones in the development of the program and the Activities that remain to be completed. Second, I will report on the current status of dose reconstructions, both completed and under way.

*Program Development Milestones.* NIOSH began developing this dose reconstruction program in the summer of 2001. We have accomplished the following milestones:

#### June – December 2001

- Recruited an initial group of scientists and support staff
- Acquired a temporary facility to house program staff
- Published interim final dose reconstruction regulation
- Published notice of proposed rulemaking for probability of causation regulation
- Established claimant interview procedure
- Developed the principal scientific tools and procedures

- Developed the records and data management systems to handle the high volume of claims and DOE data and to track and manage dose reconstructions

#### 2002

- Expanded internal staff
- Published final dose reconstruction and probability of causation regulations
- Developed implementation guides for performing dose reconstructions
- Tested tools and procedures using initial dose reconstructions
- Awarded a contract to build capacity externally, employing health physicists throughout the U.S.
- Established contractor-related procedures and trained contractor staff
- Expanded the records and data management systems
- Began locating and obtaining facility-specific data from DOE and other sources
- Assisted DOE in establishing DOE's record retrieval systems and related inter-agency policies

#### 2003

- Continued expanding internal and contractor staff
- Initiated the development of site profiles

There are several important points to note about the development of this program. First, while NIOSH has some of the leading expertise in conducting dose reconstructions for scientific purposes, the practical challenges of conducting dose reconstructions in a "production mode" for a compensation program are new to us. One key example is the need for site profiles.

A site profile is a compilation of basic information about radiation monitoring practices and radiation exposures at a facility over time. At the outset of developing the dose reconstruction program, we thought we could complete dose reconstructions in tandem with developing site profiles. By doing both at once, we thought we could complete a substantial number of dose reconstructions to limit the accrual of a backlog. We learned, however, that to be able to complete dose reconstructions in production mode for a compensation program with a high volume of cases, we had to complete initial versions of the site profiles first. It is prohibitively inefficient to collect the general site-related information used in dose reconstruction on a case-by-case basis.

- We also continue to learn on the job about the logistical demands of “scaling up” to production mode. The demands have been exceptional for unique computerized data systems, for recruiting and training a nationally dispersed workforce of experts and diverse professionals, for establishing operational procedures sufficient to guide a dispersed workforce, and for establishing effective communications within our dose reconstruction workforce and with the claimant population.

A second point concerning the development of this program is that the Department of Energy (DOE) has had to develop systems for identifying and retrieving records requested for individual cases. While DOE has extensive holdings which are of great value for dose reconstructions, DOE did not have sufficient infrastructure to identify and produce relevant records on the scale required for NIOSH to conduct dose reconstructions under the Act. Over this past year, DOE has improved this capacity enormously.

Finally, as we go forward, the Advisory Board will have an important role in the further development of the dose reconstruction program. The Board is charged under the Act with reviewing and advising NIOSH on the scientific validity and quality of the dose reconstruction program. This will include an independent review of a random sample of completed NIOSH dose reconstructions. The Board, with administrative assistance from NIOSH, recently contracted for independent scientific support and will initiate its review this year.

Status of Dose Reconstructions. Most cancer claimants must obtain a dose reconstruction from NIOSH after the Department of Labor verifies that their claim is for a covered employee with cancer. DOL uses the results of this dose reconstruction and the HHS guidelines for probability of causation to determine whether the cancer of the employee was at least as likely as not to have been related to their exposure to radiation in the performance of duty.

Health physicists conduct dose reconstructions using radiation monitoring data, when it is available, as well as information on the radiation monitoring practices, the radiation sources to which a person was exposed, and the processes and environment through which the exposures occurred. NIOSH obtains the information from DOE, the claimants, and other sources. The process of conducting a dose reconstruction is completed in 11 steps, as follows:

- Upon receiving a claim from DOL, NIOSH creates a case file, notifies the claimant(s), and requests personal exposure data from DOE or other sources, as appropriate.
- NIOSH receives and reviews personal exposure data from DOE or other sources.
- NIOSH requests additional personal exposure data from DOE or other sources, as necessary.

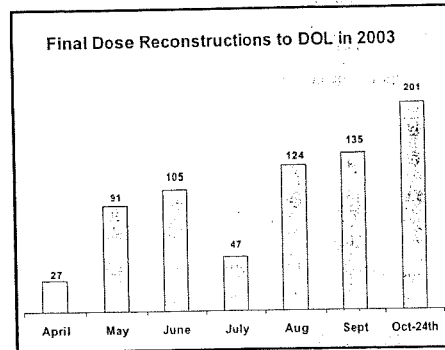
- NIOSH interviews the claimant(s) and coworkers to evaluate the completeness, quality, and adequacy of the DOE data.
- The claimant(s) and co-workers review their interview summary and correct or supplement it, as necessary.
- NIOSH assigns a health physicist to conduct the dose reconstruction, using personal and site-specific data from the site profile and other sources.
- NIOSH requests additional data from DOE or other sources, as necessary, based on informational needs identified by the health physicist.
- NIOSH submits a draft dose reconstruction report to the claimant(s) for review.
- NIOSH conducts a close-out interview with the claimant(s) to explain the dose reconstruction and to obtain any additional information from the claimant. NIOSH revises the draft dose reconstruction report and resubmits it to the claimant(s), when the claimant(s) provides additional information.
- The claimant(s) signs a form closing the record, which allows NIOSH to complete the dose reconstruction.
- NIOSH transmits the final dose reconstruction report to the claimant(s) and to DOL.

To summarize our progress on these dose reconstructions as of October 24, 2003, we had received more than 14,000 cases from DOL requiring dose reconstructions. According to the process outlined above, we have made more than 12,000 requests to DOE for data. Some requests relating to a single employee are made to multiple DOE sites at which the employee might have worked over his or her career. In addition, NIOSH often requests data from sources other than DOE, especially for cases involving employees of Atomic Weapons Employers. We have completed dose reconstruction interviews of more than 9,500 claimants and co-workers. We have assigned almost 1,800 cases to health physicists to conduct the dose reconstructions, usually after the completion of site profiles related to the case. We have drafted more than 250 dose reconstruction reports that are currently being reviewed by claimants. The claimants have up to 60 days for this review. We have completed 750 dose reconstructions and sent them back to DOL to make a final decision on the claim.

As this summary indicates, we have a substantial backlog of dose reconstructions to complete. This backlog arose because we had to begin accepting dose reconstruction requests in 2001, long before we had the structure or capacity to complete any dose reconstructions.

At this point, we steadily are increasing our capacity to complete dose reconstruction. Much of our program development is completed, as I described earlier in this testimony. The following chart shows our progress in producing completed dose reconstructions.<sup>3</sup>

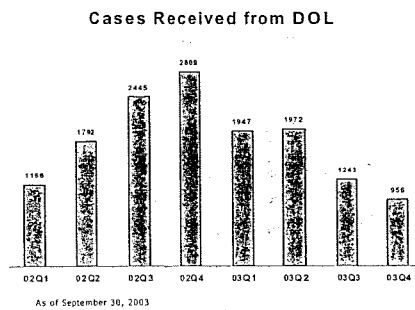




The October data in this chart covers activity through October 24 of this year.

We expect much greater increases ahead in the number of dose reconstructions completed monthly.

While our capacity is increasing, the chart below shows that the number of new cases requiring dose reconstructions has been decreasing since the fourth quarter of Fiscal Year 2002. This declining number of new cases also will help us to reduce the backlog of cases in 2004.



#### Special Exposure Cohort

The fourth and fifth responsibilities of HHS under Part B of the Act are directly related to the dose reconstruction program. They concern making additions to the "Special Exposure Cohort" ("the Cohort") established by the Act.

The Act provides members of the Cohort with a different claims adjudication procedure than that applied to most cancer claimants. Claims for members of the Cohort who have any of 22 "specified cancers" designated by the Act do not require dose reconstructions, nor do they require a determination by DOL of probability of causation.

<sup>3</sup> The chart shows the number of dose reconstructions completed in July declined. This resulted from the upgrading of the computerized database used to support dose reconstructions and from quality control activities.

Congress included in the Cohort certain employees of three DOE facilities, known as the gaseous diffusion plants, as well as employees of a nuclear weapons test site in Amchitka, Alaska. In addition, Congress authorized the President (delegated to the Secretary of HHS) the authority to designate other classes of employees to be members of the Cohort, subject to Congressional review, provided that each class of employees meets two tests:

- (1) it is not feasible to estimate with sufficient accuracy the radiation dose that the class received; and
- (2) there is a reasonable likelihood that such radiation dose may have endangered the health of members of the class."

This authority allows HHS to designate classes of employees for addition to the Cohort in situations in which a class of employees had potential radiation exposure but the available records and data are insufficient for NIOSH to complete dose reconstructions. HHS is in the final stage of promulgating a regulation that will allow it to implement this authority. The regulation will set out procedures, as required by the Act, by which classes of employees can petition HHS for addition to the Cohort, and by which HHS will consider such petitions. HHS issued an initial Notice of Proposed Rulemaking (NPRM) to issue such procedures in June 2002. In response to public comments, NIOSH made substantial changes to the proposal, and issued a second NPRM in March of 2003. The final regulation, which takes into account all of the public comments, is drafted and undergoing review. In addition, NIOSH is developing guidelines for implementing the regulation.

Once the Cohort regulation is promulgated, HHS will solicit and begin considering petitions by classes of employees. The process of considering petitions will involve the review of such petitions by NIOSH and by the Board, which will advise HHS on each petition. Some of the technical aspects of the NIOSH review will be similar to those of dose reconstructions, since a principal question that must be addressed is the feasibility of conducting dose reconstructions for members of the petitioning class. The final step in the petition process, as required by the Act, will be an opportunity for Congress to review each designation by the Secretary of HHS of classes of employees to be added to the Cohort. These decisions to add a class to the Cohort become effective in 180 days, unless Congress provides otherwise.

#### **Part D of the Act**

HHS is also charged with carrying out two activities of the Act that are not under Part B, the federal compensation program. HHS has a small but important role under Part D of the Act, which requires DOE to establish a program of assistance to certain employees of DOE contractors in state workers' compensation proceedings. DOE operates a set of physician panels that evaluate the relationship between an illness of a DOE employee

and potentially toxic exposures in the employee's workplace. When the findings of such evaluations affirm a work-related illness, meeting criteria specified by DOE in regulations, then DOE has procedures for assisting the employee in pursuing a state workers' compensation claim.

HHS is responsible for appointing the physicians who serve on the DOE physician panels. HHS has made several rounds of appointments to date, having presently appointed a total of 123 physicians to serve on the panels. HHS continues to recruit additional physicians for the panels and is presently reviewing another round of nominations.

#### **Residual Contamination**

Finally, pursuant to Public Law 107-107, HHS is responsible for conducting a residual contamination study. The study, conducted by NIOSH, evaluates whether significant residual contamination remained at atomic weapons employer or beryllium vendor facilities after such facilities had concluded work for DOE or its predecessor agencies.

HHS submitted a progress report on this study to Congress in December 2002. The progress report found that about half of atomic weapons employer facilities needed further evaluation. Of the half that had been fully evaluated, most sites had little potential for significant residual contamination. On the other hand, most of the beryllium vendor sites were fully evaluated and continue to have potential for significant contamination. The final report will be issued shortly and will provide more complete information.

#### **Conclusion**

In conclusion, HHS and NIOSH are working intensively to meet our responsibilities under the Act. The major tasks are difficult because they employ dose reconstruction expertise and systems on an unprecedented scale. We remain keenly aware, however, that the nuclear weapons workforce and their families are relying on us to accomplish this work as quickly as possible. We understand that "doing the best we can" is not good enough from the perspective of our claimants, some of whom are dying of cancer or have lost a spouse, parent or sibling to cancer. As we proceed, we will continue to strive to produce dose reconstructions that are as timely as possible, that are fair, and that are grounded in the best available science.

Thank you for this opportunity to provide an update on the status of HHS activities under the Act. Mr. Elliott and I would be pleased to respond to any questions of the Subcommittee.

Chairman NORWOOD. Thank you, Dr. Howard.  
Now, we would like to go to Mr. Elisburg for 5 minutes.

**STATEMENT OF DONALD ELISBURG, ATTORNEY, AFL-CIO,  
BUILDING AND CONSTRUCTION TRADES DEPARTMENT**

Mr. ELISBURG. Thank you, Mr. Chairman, Members of the Subcommittee. Thank you for the opportunity to testify today. We have a detailed statement which we have submitted for the record.

I would like to point out one correction in that statement, which is that the special exposure cohorts of the statute also include workers from Amchitka Island, Alaska. In the process of putting this together, that piece got dropped out.

The AFL-CIO and its affiliates have a significant interest in the implementation of this program because of the involvement since the nuclear weapons program began as the Manhattan Project in the early 1940's, when members of the various affiliate unions built and maintained the many facilities used to develop and maintain nuclear weapons. Our members have also served as the principal production and operating personnel of these weapons facilities.

For decades, the AFL-CIO, the Building and Construction Trades Department, the Metal Trades Department, PACE, and other unions have worked to secure safety and health rights and protections, and just compensation for these workers, and this statement really has been approved and represents the view of all these affiliates.

As we have testified before Congress many times, these workers were engaged and continue to be engaged in activities vital to the security of the United States. They deserve to be treated with fairness and dignity.

The law was passed in recognition of the fact that the work at these facilities put workers at risk of injury, illness and death from exposure to radiation and various toxic chemicals and materials used in the nuclear weapons program. Secrecy put these workers at additional risk. The law was Congress' recognition and determination to compensate workers and their families, even if it would not make them whole.

Unfortunately, the experience with the implementation of this program is just not what these sick workers or their survivors survive, nor does it meet the objectives Congress set forth in the Act. Energy workers with radiation induced cancers need timely compensation and that is not happening with many thousands of claimants.

Let me point out that there are really two pieces to this statute, which is the Part B dealing with the Department of Labor and NIOSH, and Subpart D which are the so-called Department of Energy claims.

You have asked that we comment on the Department of Labor and NIOSH, but our statement does include some extensive analysis and discussion of the other part of the program because of those many thousands of claimants who are not being promptly dealt with.

Subpart B provides a lump sum payment if workers meet certain criteria of radiation and if cancers are cancers due to exposure to silica and beryllium. The statute appears to have created two class-

es of workers, those in special exposure cohorts designated by Congress, and those who are otherwise to be individually adjudicated.

If you are designated by Congress, you file your claim, it is reviewed for medical sufficiency and employment history, and you get paid by my colleague, Shelby Hallmark's group, and I must say Shelby was one of our better success stories at the Department of Labor. It is presumed that you were exposed to sufficient radiation to have caused the cancer.

If you are not in the special exposure cohort, you are subject to the complicated and user unfriendly process of dose reconstruction to see if you have enough radiation exposure to qualify for compensation.

The difficulty with this approach is that the records are simply not sufficient to ascertain the individual dose exposures. NIOSH is proposing a complex formula and extrapolation to obtain a reconstructed dose.

If I may say, with due respect to my friend, Dr. Howard, it is a Rube Goldberg device of the finest complexity.

Aside from whether there is a fundamental fairness issue for each individual, it is clear that the process will be time-consuming and extend the time when these claimants will receive their due compensation. Most importantly, we believe that the statute does not require NIOSH to proceed with such a difficult program that places a much higher burden on these claimants than those in the statutorily named cohorts.

The other part of this is that the process, we feel, aside from being complex, it has not been either transparent or really participatory by those claimants who have interests here.

NIOSH, for example, went off and decided they were going to have a site profile relating to the Savannah River site, which they compiled and never bothered to talk to any of the represented workers there because they said there were no unions. The Building Trades have been at Savannah River for more than half a century. They built the place. They still maintain the place.

In short, we think there is a long trail here for a claimant to become successful under the way that the program is being implemented through these NIOSH dose reconstructions, and we think the statute does not require this kind of years and years delay.

Thank you for the opportunity. I will be glad to answer any questions.

[The prepared statement of Mr. Elisburg follows:]

**Statement of Donald Elisburg, Attorney, AFL-CIO, Building and  
Construction Trades Department**

Mr. Chairman and Members of the Subcommittee:

My name is Donald Elisburg and I am appearing today on behalf of the AFL-CIO. I have been asked to testify because of my prior experience with implementing similar programs in the past. I testified in support of the legislation that ultimately became EEOICA before the Congress, specifically in support of assigning this program to the Secretary of Labor when this law was under consideration. I was also a member of the Workers Advocacy Advisory Committee of the Department of Energy from January 2001 through December 2002. That Advisory Committee was appointed to assist the Department of Energy in implementing its responsibilities under EEOICA.

I want to thank you for the opportunity to testify on the implementation of the EEOICA.

The AFL-CIO and our affiliates have a significant interest in the implementation of this program because our involvement since the nuclear weapons program began as the Manhattan Project in the early 1940's when members of our affiliate unions built, and maintained the many facilities used to develop and maintain nuclear weapons. Our members have also served as the principal production and operating personnel of these weapons facilities. For decades, the AFL-CIO, the Building and Construction Trades Department (BCTD), Metal Trades Department, PACE, the Laborers and other unions have worked to secure safety and health rights and protections and just compensation for these workers.

As we have testified before Congress many times, these workers were engaged and continue to be engaged in activities vital to the security of the United States. They deserve to be treated with fairness and dignity.

EEOICPA was passed in recognition of the fact that the work at these facilities put workers at risk of injury, illness and death from exposure to radiation and various toxic chemicals and materials used in the nuclear weapons program. Secrecy put these workers at additional risk. EEOICPA was Congress' recognition and determination to compensate workers and their families even if it would not make them whole.

Congress directed the President to implement this program. By Executive Order the program was assigned to the Departments of Energy, Labor and HHS.

Unfortunately, the experience with the implementation of this program is just not what these sick workers or their survivors deserve, nor does it meet the objectives Congress set forth in the Act. Energy workers with radiation-induced cancers need timely compensation and that is not happening with many thousands of claimants.

Subtitle B of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), 42 U.S.C. §§7384-7385, enacted in 2000, established a federal program to compensate workers at Department of Energy atomic weapons and contractor facilities for illnesses resulting from radiation, beryllium, and silica. The program provides a \$150,000 lump sum payment and prospective medical benefits to covered employees or a lump sum payment to their survivors. To date, the Department of Labor has paid over \$672 million in benefits. But there is a huge backlog of claims pending—more than 14,000—awaiting dose reconstruction by the National Institute for Occupational Safety & Health (NIOSH). Claims of workers with cancer who are awaiting payment because NIOSH has not completed their dose reconstruction arise in states throughout the country.

NIOSH should streamline the procedures for evaluating these claims so workers and their survivors can be compensated in a timely manner as Congress intended. The fairest and most efficient way to do this is to streamline the procedures to add groups of workers to the Special Exposure Cohort so their claims can be considered on an expedited basis.

#### *Radiation Dose Reconstruction and Special Exposure Cohorts under EEOICPA*

When EEOICPA was passed, the Congress designated certain groups of workers with cancers linked to radiation exposure to be included in a special exposure cohort (SEC) because DOE's radiation exposure records were so poor it was not possible accurately to reconstruct each employee's radiation dose. Under the Act, workers employed at DOE gaseous diffusion plants in Oak Ridge, Tennessee, Paducah, Kentucky or Portsmouth, Ohio were automatically included in the SEC. For these employees, compensation is paid without regard to an employee's individual radiation dose if the claimant has one of the designated cancers and meets the Act's general exposure/employment criteria. These claimants receive compensation for cancer promptly.

But for workers with cancer from all other DOE facilities, or for those with cancers other than those specified as presumptively linked to radiation exposure, different, complicated procedures were established—requiring either individual dose reconstruction or a lengthy process to designate additional members of the SEC. NIOSH has been given responsibility for both of these activities, but because of the complexities involved, has fallen years behind. More than 14,400 claims are now pending dose reconstruction and no new members have been added to the SEC. So far, NIOSH has forwarded completed dose reconstructions to DOL for only 700 claims. At the rate NIOSH is going, it will be years before these backlogged claims are processed and victims receive compensation. Meanwhile, DOE workers with cancer do not have the medical or cash benefits Congress provided and their widows grow old without the economic security to which they are entitled.

#### *Backlog of Pending Claims at NIOSH Awaiting Dose Reconstruction*

The backlog of pending claims at NIOSH is a problem that affects workers throughout the country and is particularly severe at some of the larger DOE weap-

ons facilities where large numbers of workers were exposed to radiation. These facilities including Rocky Flats (CO), Iowa Ordnance Plant (IA), Idaho National Lab (ID), Fernald (OH), Los Alamos (NM), Nevada Test Site (NV), Savannah River (SC), Oak Ridge National Lab (TN), and Hanford (WA). The table below shows the number of claims (and individual cases) from all Department of Energy facilities awaiting dose reconstruction at NIOSH by state (for states with more than 50 claims).

State	Claims Filed	Claims Accepted*	Pending at NIOSH
Alaska	286	106	64
California	1594	145	810
Colorado	3214	1488	788
Florida	1251	146	613
Idaho	1097	56	652
Illinois	1120	95	540
Iowa	1079	30	599
Kentucky	3523	844	775
Massachusetts	419	9	207
Michigan	233	16	102
Missouri	1016	69	529
Nevada	1680	142	815
New Jersey	132	10	56
New Mexico	3577	1225	642
New York	2293	141	1279
Ohio	2854	709	1008
South Carolina	2458	42	1516
Tennessee	7208	1506	3143
Texas	1234	129	601
Washington	2388	107	1669
West Virginia	508	34	90

\*Accepted claims include claims for chronic beryllium disease, silicosis, as well as radiation cancer.

One of the major reasons for this delay is that for many workers DOE radiation exposure records are incomplete, inaccurate or nonexistent. When NIOSH reconstructs a radiation dose, it must make educated guesses as to what an employee's dose was likely to have been. While NIOSH claims that its process is employee friendly, nobody can gauge whether NIOSH dose reconstructions bear any reasonable relationship to an employee's actual radiation dose. We cannot state too strongly the need to be sure that this aspect of the program is transparent and credible to the claimants and their families.

As stated earlier, this entire compensation program has to be measured against the very long and well documented history of secrecy and deceit on the part of the Department of Energy and its predecessor agencies tracing back to the earliest days of the Manhattan Project. This long history and the resultant distrust of the DOE requires an open and transparent program. This is especially true given the technical complexity of dose reconstruction and the reliance on DOE to provide the dose data.

Many thousands of our members served their country in the cold war by working at these facilities often under very difficult conditions. They deserve to be treated with respect and should have a compensation program that they can trust and understand.

Unfortunately, some of the activities that NIOSH has undertaken appear to be at cross purposes with this goal of an open and transparent program. As an example, NIOSH has recently implemented a plan to develop site profiles for each major site as a framework for individual dose reconstructions. These profiles would include the major sources of exposure data for the site. However, NIOSH's procedure included no opportunity for input into these site profiles by unions, interested parties, etc. until after the profiles were complete and being used by NIOSH. This procedure only compounds the past mistakes made by DOE to hide information from the ex-

posed workers and their families. The Advisory Board raised objections to this approach and has asked NIOSH to develop a more open process involving the local unions and other interested parties in the development and review of these site profiles in order to ensure the credibility of the dose reconstruction program. The Savannah River Site is a prime example. The site profile was released in August without any discussion or review with the local unions or other interested parties. NIOSH's initial excuse, that there were no unions at SRS, totally missed the fact that there have been union workers engaged in building and maintaining the SRS facility since the first construction activity a half century ago. We would note for the record, that after extensive protest, NIOSH is now undertaking a meeting at SRS in November to discuss this profile with the local unions and interested parties. These activities should not have to be undertaken only after claimant protests.

Similar concerns about the uncertainty of dose reconstruction have been raised about Department of Defense radiation dose estimates for military personnel. Unlike DOE nuclear workers, under veterans' compensation benefits, all veterans with specified cancers are presumed entitled to compensation. Dose reconstruction is used to determine whether to compensate veterans for other diseases. The National Academy of Science's Institute of Medicine recently evaluated the DOE dose reconstruction process. It concluded:

Because specific exposure conditions for any individual often are not well known, many participants did not wear film badges during all possible times of exposure, and the available survey data used to input the models often are sparse and highly variable, the resulting estimate of total dose form many participants are highly uncertain.

#### *Problems With Proposed NIOSH SEC Procedures*

There are major problems with the proposed procedures for the designation of additional members the SEC. Under EEOICPA, additional members of the SEC may be designated when it is not feasible to estimate with sufficient accuracy the radiation dose of the affected workers. (Section 3626). This spring, NIOSH proposed procedures for designating additional members of the SEC. The NIOSH proposal was strongly criticized by the Advisory Committee on Radiation and representatives of DOE workers. Decisions on adding additional members to the SEC can be expected to take at least two more years—almost five years from the enactment of EEOICPA. Employees seeking designation as members of the SEC will have to meet a high burden of proof—a burden not imposed on fellow workers from gaseous diffusion plants who have already received compensation for their radiation induced cancers.

Workers at DOE facilities such as Hanford, Rocky Flats, and Savannah River, and other locations, are treated unfairly under EEOICPA. Their colleagues at gaseous diffusion plants, like veterans, are presumed eligible for compensation if they get certain cancers and many have received compensation. Meanwhile, these other workers, whose radiation doses likely were just as high and for whom radiation dose records are just as sparse, must individually demonstrate their right to compensation. The process for doing so, dose reconstruction, is too slow and inherently uncertain. Only a handful of workers outside the SEC have actually received compensation for their cancers since EEOICPA was passed.

#### *Streamlining SEC Procedures and Expediting Compensation for Victims*

EEOICPA needs to be fixed so DOE workers with radiation induced cancers or their survivors receive timely compensation. The following modifications to the program would accomplish this goal by simplifying and streamlining the procedures for adding additional groups of workers or facilities to the special exposure cohort. NIOSH has the authority to implement each of these policies, but has so far failed to do so:

- Set deadlines for NIOSH to respond to petitions to add workers to the Special Exposure Cohort—providing 90 days for response and an additional 45 days where NIOSH requests review of the petition by the Advisory Committee on Radiation.
- Allow NIOSH to determine which petitions for adding groups to the SEC need to be reviewed by the Advisory Committee. (Currently all petitions, even those pertaining to small groups of workers must be referred to the Advisory Committee.)
- Clarify that NIOSH may add a group of workers to the SEC if it determines that representative records of radiation doses for the individual are incomplete or missing and that radiation may have caused or contributed to specified cancers among members of the group. (These were the criteria that were used to designate workers at gaseous diffusion plants as members of the SEC in the



original Act.) Currently, NIOSH attempts to reconstruct doses even if individual monitoring records are not available.

- Establish the same criteria for compensation for new groups of workers added to the SEC as those set for gaseous diffusion workers in the original Act.

These revised procedures will streamline the process for evaluating petitions for expanding the SEC, and for those groups of workers who are added, expedite the process for evaluating their individual claims for compensation. Once added to the SEC, the same criteria for compensation will apply to these workers as applies to workers at the gaseous diffusion plants. The recommended procedures do not expand the number of workers eligible for compensation, nor should it change the anticipated costs of the program. Most of these claimants are already eligible for compensation. They are just required to wait far too long to receive the compensation they are due. Streamlining the process and clarifying the criteria by which these employees may be added to the SEC simply changes the procedures by which the merits of their claims are judged and speeds up the compensation process.

Mr. Chairman, our organizations have a longstanding relationship with the Department of Labor and with NIOSH. We supported the assignment of this program to them. We believe that the Department of Labor has done a very commendable job so far in getting its program up and running. As the comments submitted by our respective organizations to NIOSH make clear, we believe that NIOSH is simply misreading its responsibilities under the existing law and has proposed a regulatory scheme that will not work and which will result in both a costly process and an intolerable wait by claimants for relief. If NIOSH persists in interpreting the statute with such restrictive requirements, then, we see no alternative but to support changes to the law that will ensure equal treatment of all claimants under this program.

Mr. Chairman, I would like now to turn to other serious problems with EEOICPA, namely the Subtitle D program administered by the Department of Energy.

#### *Background on Subtitle D of EEOICPA*

Subtitle D of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) was intended to take DOE out of the business of fighting state workers' compensation claims brought by sick nuclear workers who were employed at DOE defense nuclear sites. Benefits are provided for workplace-related disabilities and medical costs. In September 2002—almost two years after the enactment of EEOICPA—DOE issued a rule governing the operations of the Physicians' Panel (10 CFR Part 852). The rule established the criteria for Physician Panels to determine whether an illness or death arose out of and in the course of employment by a DOE contractor and exposure to a toxic substance. That criteria is whether "exposure to a toxic substance at a DOE facility during the course of employment by a DOE contractor was a significant factor in aggravating, contributing to or causing the illness or death of the worker at issue." (See: 10 CFR Part 852.8).

A simple majority of a Panel (two of three doctors) must agree in order to issue a determination. The rule prohibits contractor involvement in contesting Physician Panel findings, but allows claimants to appeal adverse Physician Panel findings within the DOE's Office of Hearings and Appeals. A total of 26 appeals have been decided to date. DOE estimated benefits and administrative costs for this rule at \$130 million/10 years during the rulemaking. Physicians are selected by NIOSH—instead of the DOE—in order to provide a measure of independence. There are approximately 120 doctors who have been approved by NIOSH for the DOE Physicians Panel. Due to the low rates of compensation (\$55–60/hour), some physicians with clinical practices have withdrawn from participation. Once a Physicians' Panel issues a positive determination, DOE is required to provide the claimant with assistance in filing their claim with a state workers' compensation commission.

Pursuant to EEOICPA, DOE must direct contractors not to contest the state workers' compensation claims, to the extent allowable by law, and DOE may not reimburse contractors for legal costs of contesting such claims. Practically, this means DOE will instruct its contractors to send a letter to the state workers' compensation board indicating that they will not contest the claim. However, this doesn't necessarily mean that the claim will be paid, because some "payors" are not under DOE's/contractor's control and are unwilling to pay (e.g., exclusive state funds and insurers).

States and insurance companies are not agreeing to be bound by DOE Physician Panel determinations. Although DOE entered into Memorandum of Agreements (MOA) with 12 states (AK, CA, CO, ID, IA, KY, NM, NV, OH, SC, TN, TX) during 2002, none of these agreements require states to accept the findings of a Physicians' Panel. All 12 states reserve the right to impose their own provisions of state law rather than abide by the findings of DOE or its Physicians' Panel.

For example, the DOE-Alaska Commission Agreement of 9/13/02 says:

“A positive determination pursuant to Part 852 [DOE’s Rule] has no effect on the scope of State worker compensation proceedings, the conditions for compensation, or the rights and obligations of the participants in the proceeding; provided that consistent with Subtitle D, such a determination will prevent DOE and may prevent a DOE contractor from contesting an applicant workers compensation claim, and DOE may agree to indemnify a DOE contractor/insurer for State of Alaska workers compensation claims.”

To get valid claims paid, DOE is counting on its current site contractors, many of which are self-insured for workers’ compensation, to pay the claims and the DOE will reimburse them (using appropriated funds). At a number of DOE sites in IA, OH, KY, AK and CO, the DOE has not identified a “willing payor.” A “willing payor” is an entity which DOE can meaningfully direct to pay claims after a Physicians Panel determines that a claim is work related. DOE’s General Counsel has indicated that up to 50% of valid claims may not have a “willing payor”. DOE has not inventoried those locations where it lacks a “willing payor.” DOE’s Worker Advocacy Advisory Committee (WAAC) warned the Secretary in August of 2001, and again in June of 2002, that the absence of a willing payor was a large, unresolved problem which would pose a “gross inequity” to claimants (as we are witnessing today in Alaska).

On June 27, 2002 WAAC Chairwoman Emily Spieler (Dean of the Northeastern University Law School) wrote on behalf of the Committee:

“WAAC Members thought that there was no legal impediment to payment of these claims by DOE. But we also think that if DOE is unwilling or unable to pay these claims, it’s absolutely essential for DOE to seek additional appropriations or support alternative legislative solutions that will result in payment of these claims without throwing them into the state workers’ compensation systems to be litigated. If the latter occurs, insurers and state funds will not be required to waive any technical or other defenses to these claims, and it is highly likely (after considerable administrative expense) that few, if any, of these claims will be paid.”

The Advisory Committee accurately described the problem that has now arisen in Alaska.

The Committee concluded:

These claims should be handled in the same manner as the claims of current contractors, through a central non-risk bearing third party administrator, with a source of payment designated by the Department.

In response to this recommendation, Assistant Secretary Cook wrote (8/9/02):

“The issue of mechanisms of payment of claims where there is no current contractor with responsibility for paying a claims remains a concern. We will continue to explore possible remedies with the WAAC, the General Counsel and Congress to correct this inequity.”

DOE allowed the Advisory Committee’s charter to expire 1/1/03. Neither DOE nor the Administration has proposed any solutions, despite repeated requests from Governors, workers’ compensation commissions and Members of Congress.

DOE has received approximately 18,823 claims for assistance as of August 29, 2003. In the year since its rule has finalized, DOE has made very little progress on its backlog.

Only 74 (0.3%) have been decided by the Physicians Panel (45 accepted and 29 rejected) and 132 (0.6%) are in the Physicians Panel process. DOE has not even started case development work on 14,434 cases (71%). DOE estimates a backlog of 5 years. Others foresee a much longer time to process claims. In testimony before the Senate Energy Committee in February, Secretary of Energy Spencer Abraham committed to have 100 claims per week completed by August of 2003. But the DOE failed to meet that goal.

DOE has received a significant amount of funding to run the Workers Advocacy Office. The resources have been there, but the ability to get the program off the ground is lacking.

#### *Speedup Claims Processing*

There are many possibilities for speeding up claims processing including requesting the assistance of the Department of Labor in developing claims and using the existing former worker programs to assist in developing claims, just to name a few actions.

#### *Willing Payor*

There are several options available to resolve the willing payor issues:

DOE could enter into cost-reimbursement arrangements with a national (or site specific) non-risk bearing Third Party Administrator (TPA) to serve as the willing payor where (a) DOE contractors are no longer present at DOE sites, (b) where DOE contractors were not self insured and an insurance company "owns" the claim, or (c) where there is an exclusive state fund (OH, NV and WA). Claims payments would be subject to appropriations. Levels of benefits would be set by state compensation agencies. The TPA would assume full liability in lieu of employers, insurers or others who could object to a claim. Presumably disability determinations would still have to be made by a state compensation panel. The Advisory Committee suggested this approach.

DOE could enter into contracts with exclusive state funds, insurers or TPAs to assume payment of claims in each instance where there is no willing payor. Ohio's exclusive state fund has made such a proposal.

#### *Conclusion*

Congress has made a firm promise that each nuclear worker with radiation cancer will receive compensation. That promise must be kept. We must also work to fix the problems with the DOE program, so those with other work-related illnesses caused by toxins at the DOE complex will receive workers' compensation payments.

Thank you.

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Chairman NORWOOD. Thank you, sir, very much. I will tell you, I do not know who they complained to in the Department of Labor, but all of them have talked to me.

I would like to recognize Congressman Wamp now, for a brief statement.

Mr. WAMP. I just want to thank the Committee, Chairman Boehner, Chairman Norwood, the Ranking Member, and everyone for taking this important step in a program that has been very complicated and difficult to administer. There are a lot of questions out there today with the Grassley amendment pending in the Senate as to the future of this program. While this hearing was not called to discuss that, the timing of the hearing is very critical because a lot of people are wanting this to be done in a more effective way, and DOL actually has done a lot of things very well. There is \$170 million that has been paid to Oak Ridge workers already, which is very significant.

I just want to thank you all for doing this. This is a matter of life or death to a lot of people that I actually represent, so this really hits home when you run into these people at the grocery store or at church and they talk to you about their stories and you know their family members, you know that this is a program that is being administered by the government, but it has real life consequences.

Thank you for doing this. I hope we can have more hearings. Other Committees with jurisdiction have not been as quick to respond to our request for hearings, so thank you very much for having this most important hearing.

Chairman NORWOOD. Thank you, Congressman Wamp. We appreciate your concerns. I have similar concerns as you do. I think probably at the end of the day, one has to wonder, we do not want to change course maybe after we have spent 2 years getting ready to do it right. I am going to ask during my time a few of those questions.

Mr. Hallmark, I would like to start with you. The Savannah River site actually is not in my district. It is right across the Savannah River in South Carolina. I have a lot of constituents who live in my district. I have had more than 300 of them file claims

as a result of their working for the Nation and the people of the country at Savannah River site.

Only a handful of these people have received a final decision, and I had hoped maybe you would tell me what I should say to them when they ask me why so few have received a final decision. If you will tell me that, then they have one other question they want me to ask.

Mr. Hallmark?

Mr. HALLMARK. Thank you, Mr. Chairman.

Clearly, the major issue associated with the cases that are in your district is the NIOSH dose reconstruction process. The large number of cases that have come to us must have that causation analysis done.

Chairman NORWOOD. Do I tell them that is the problem, that analysis takes a long time?

Mr. HALLMARK. It does.

Chairman NORWOOD. I'm looking for a sensible answer to tell people who are concerned.

Mr. HALLMARK. Absolutely. My understanding is that NIOSH has published the site profile for Savannah River. They are now in a position and in fact have already moved quite a number of the Savannah River cases into the final stages of dose reconstruction, so it is my anticipation that we will be receiving back from NIOSH within the next few weeks and months—

Chairman NORWOOD. Define "final number." Give me some clue what you are talking about when you say a large number has been moved over to NIOSH.

Mr. HALLMARK. John probably has the number.

Chairman NORWOOD. Anybody.

Dr. HOWARD. Mr. Chairman, we have 1,824 claims transferred to us from Savannah River, 2,129 interviews scheduled. We have completed 173. We have draft reports on 318. Our technical basis documents for that, that allows us to complete all of them, is done. We are going to Savannah River on November 11th to have a meeting with the workforce there. We should see those claims coming through the system very shortly.

Chairman NORWOOD. Of course, Savannah River is in my backyard. There are other members who have similar problems. Is that type of percentage occurring across the country, or are we doing better than Congressman Wamp at Oak Ridge or Mr. Strickland? How is it coming across the nation?

Dr. HOWARD. I think from our perspective, when we are looking at the dose reconstructions that we have in our system, we are primarily dependent, I think, right now, in the next 60 to 90 days, on completion of our technical basis documents, which will allow us to take the dose reconstructions that we have pending, for any of those sites. Once our technical basis document is done, and we have reviewed it with the workforce and DOL has reviewed it, then our claims will start moving through the system very rapidly.

We are averaging about 60 days once we have that information done.

Chairman NORWOOD. I am going to tell them the problem it is taking so long is this is a very complex situation in which we have determined dose reconstructions. That is a true statement?

Dr. HOWARD. I think I would agree with Don's comment. This is a scientifically complex dose reconstruction issue. There is complexity to it. In the beginning, when we were looking at this, we thought we could take an individual approach. About six to 8 months ago, we decided we need technical basis documents for an entire site, to look at radiation doses, the types of radiation that was used, the sources, et cetera. Those are being completed now, so that we can do production scale dose reconstructions very quickly.

Chairman NORWOOD. I think our folks will understand that. They are bright, hard-working people. They are going to understand that explanation.

The next question they want me to ask is OK, we know it is difficult. We know it is complex. Give us a timeframe. When can we expect an answer? I want to go home and tell them.

Mr. HALLMARK. In any workers' comp system, there are always variables, and not every case is going to go through the process at exactly the same time. I think my understanding of what NIOSH is doing is that the bulk of the cases in Savannah River should move within the next three to 4 months through their process and coming back to us. Some of those will start in the next few weeks and some will take longer in that time period.

I would expect that the majority of the dose reconstruction cases will be through their system and through ours by the early part of 2004. That is probably a better situation than it will be in other sites, because the site profile is in fact further along and completed in Savannah River, and they are still working on it in other locations.

Chairman NORWOOD. I can tell them, the majority of this is going to be taken care of by the early part of 2004, and if that is not correct, I can say, OK, here is Mr. Hallmark's telephone number, call him.

Mr. HALLMARK. I think it is on the Web. I believe you are going to be able to do that, sir.

Chairman NORWOOD. I can tell Doc Hastings out at Hanford the same thing?

Mr. HALLMARK. As I said, the issue of the completion of the site profile is critical.

Chairman NORWOOD. How are the rest of the folks doing with site profiles?

Mr. HALLMARK. John can tell you where they are with Hanford, but I know there has been substantial work done at Hanford and it is progressing.

Dr. HOWARD. We have about ten technical basis documents that are in process now that we hope to complete by the end of December. Hanford is almost nearing completion.

Chairman NORWOOD. Obviously, we have votes going on. Major Owens wants to go ahead and ask his questions, and we will do that, and then we will recess right after your questions, go vote, and we will be right back. Mr. Owens?

Mr. OWENS. To begin, do you contemplate a great deal of fraud in this program? The probability of causation is an algorithm used to determine if a diagnosis of cancer is or was likely than not

caused by exposure to radiation while in the performance of duty. That is in your chart in terms of probability of causation.

Are people exposed to large amounts of radiation somewhere else other than on a work site?

Mr. HALLMARK. There is naturally occurring radiation and other sources of radiation.

Mr. OWENS. Enough to be significant in terms of their health?

Mr. HALLMARK. Potentially, yes, but this definition that you are seeing here is basically extracted from the statute.

Mr. OWENS. What degree of fraud have you come across?

Mr. HALLMARK. I do not think fraud is an issue that we have been particularly focused on. Obviously, any system like ours has to have criteria and control processes, because if you are giving out Federal monies—

Mr. OWENS. What I am trying to get at is why is the process so slow and why is it so complicated? Mr. Elisburg?

Mr. ELISBURG. That is the dichotomy I was pointing out in my testimony. Savannah River, Hanford, are not part of the special exposure cohorts. When Congress designated Portsmouth, Paducah, the Oak Ridge gaseous diffusion plant, and Amchitka Island, those workers simply if you had the disease, if you had the employment, you were presumed to have the radiation exposure, and you are getting paid.

Savannah River, Hanford, many of these other sites—

Mr. OWENS. What about Niagara Falls?

Mr. ELISBURG.—Niagara Falls, they are all the same kinds of workers, same kinds of exposures, but they have to go through these multiple hoops of establishing exposure in situations where there are no records of exposure, or the records are poor, or they have been destroyed, or they were done 35 or 40 years ago, and you are going into this vast morass, and when the NIOSH people said, well, we have to come up with some formula, they created this what we call sort of nightmare process to try to extrapolate and create a situation to show that you could have been exposed. That is not to say that eventually they will not come up with some exposure data, but it will be a guesstimate. It will be a best guesstimate.

That is why you are taking years and years for these folks who are not in the special exposure cohorts, and a much shorter period of time once you have been determined to be in that special group.

There is really no difference as between the workers who are at one of the sites or the others, and the reason they were put into the special exposure cohorts was there was an understanding that they didn't have the records. If they do not have the records at these other places, it seems to me that is the case for treating them the same.

Mr. OWENS. Questions have been raised about the sense of urgency and the efficiency of the way the program is being implemented.

I understand the president of PACE, the Paper Allied Chemical and Energy Workers Union, in Hanford, Washington, had never met any staff from the Hanford Resource Center, did not know where the Resource Center is located, how many employees are em-

ployed at the Resource Center in Hanford, and what you are doing to improve outreach in a place like Hanford.

Mr. HALLMARK. That would be the Labor Department. We jointly run the resource centers with the Department of Energy in ten sites. Hanford is a site where we are keenly aware that we need to do a better job.

We have not received as many claims, given the size of the population of the people who have worked in Hanford, as we have in other sites, and certainly not as much as we expected, so one of the things, as I indicated in my statement, that we are going to be doing in 2004 is working very hard to make sure that outreach happens, and Hanford is one of the real focuses.

One of the things we are also doing, Mr. Owens, is we are working directly with union groups, with the Committee for the Protection of Worker Rights, to find people who may have left the Hanford area and are somewhere else.

We have a multi-faceted approach to try to make those kinds of contacts happen and make the program much more transparent.

Mr. OWENS. Representatives of PACE contend that a mobile resource center is actually one employee in a hotel room with a phone, no computer, little or no background materials, for a single day. The question is realistically how many workers can be helped with that kind of mobile resource center.

Mr. Chairman, I would like a second round of questions so I can pursue this later.

Chairman NORWOOD. Yes, we will do that. What we will do is recess now. We have two votes. We ask your indulgence. We will be back just as fast as we can and continue this. I think both of us have a lot of questions.

Mr. Hallmark, get ready. I am going to ask you about the benefit of doubt for claimants when we get back.

[Recess.]

Chairman NORWOOD. The Committee will come to order.

Mr. Hallmark, this business of the claimants being given the benefit of the doubt in terms of whether or not their illness was caused by radiation on the job, explain that policy to me a little bit.

Mr. HALLMARK. I believe the reference you are making is in the statute itself by establishing an "as likely as not" criterion, pointed in the direction of benefit of the doubt. I believe the real focus of your question is with respect to how NIOSH is implementing dose reconstruction and the kinds of assumptions they are making as they do that work.

Dr. HOWARD. And I think that is correct. What we do in terms of reconstructing a dose is to look at all the data that is available. In many cases, the data is incomplete in that there is missing monitoring data about the dose that the person incurred years ago, so the idea of giving the benefit of the doubt is making assumptions that give the benefit of the doubt to the claimant, assuming circumstances that are likely to over estimate the dose that the person would have been exposed to.

For example, we might assume that all the employees involved in a process received the highest levels of radiation monitored for any employee in the process, and that we give that dose then to everybody.

It occurs when the data that we get back from DOE is not totally complete, so we make those assumptions that benefit the claimant.

Chairman NORWOOD. How often does that happen, that you do not get data back that is complete?

Dr. HOWARD. Oftentimes, the data that we get, especially for individuals at multiple sites, may have some gaps in it. I do not know an exact percentage. I would ask Mr. Elliott if he had some idea about how often that occurs.

Mr. ELLIOTT. Thank you. I think we could honestly say that almost on every case, we add dose into the dose record. We account for mis-dose, unmonitored dose, instances where a particular radionuclide was not monitored, we factor that in and put that back into the dose record for our estimation purposes and our reconstruction.

Chairman NORWOOD. If there were 300 claimants—and forgive me for using SRS, I just know a little something about that—if there are 300 claimants, it would appear to me that they would all be claiming the same thing about the same time, that there might have been exposure to radiation. Is that not true?

Dr. HOWARD. Yes.

Chairman NORWOOD. If you do not have enough information, it affects all 300 of them at a particular given time?

Dr. HOWARD. Indeed, it may affect an entire group of employees or a smaller group at that site.

Chairman NORWOOD. You are saying to me that you are trying very hard to give these claimants the benefit of the doubt, that they should not be held lacking just because there was not good records kept?

Dr. HOWARD. Exactly. It is not their fault that the records are missing or there are gaps in the monitoring records.

Chairman NORWOOD. Dr. Howard, tell me, I think it would be interesting to the Committee, how do you determine the amount of radiation that an employee is exposed to? Tell me a little bit about that process.

Dr. HOWARD. I think I am going to ask Mr. Elliott to expound on that, but clearly, what we are doing is we are trying to look at the exposure, the total exposure of radiation that employee has received over their working life, and then looking at whether or not it is probable that the adverse health effect that they are claiming, the cancer, arises from that exposure. That is the scientific complexity.

Larry?

Mr. ELLIOTT. Thank you. We take into account the type of material that was handled by these workers, what kind of radionuclide, what kind of radiation exposure they encountered. We factor into their dose reconstruction occupationally required medical x-rays that were required as a condition of employment. We think that is a radiation dose that should be accounted for in their record.

We strive to do the best job we can with the information that we have, and when that information is lacking, we look to what we call the course term, the type of material that was used and what kind of radiation levels came from that particular type of material.

Chairman NORWOOD. What you are describing is why it is difficult, in a roundabout way.



Mr. ELISBURG. Mr. Chairman, can I make one observation about that?

Chairman NORWOOD. You certainly can.

Mr. ELISBURG. The verdict is kind of out as to whether this complex system that NIOSH is trying to put in will work at all, because there have not been enough cases to really see.

If you are familiar with the Savannah River site, for example, it's about half the size of Rhode Island, if not larger, we have members who may have worked at a given part of that facility in one of the many plants there day in and day out at the same place, and perhaps you can measure what they are talking about.

We have many, many of the construction workers, for example, who may have worked across that site with its many different facilities, some of which are located five or eight miles apart, with many different kinds of exposures over a 20 or 30-year period.

In the absence of the kinds of records that in theory you would have of their exposure, and many of them were not even monitored for radiation exposure, I think it is going to be a very difficult and long-drawn-out process to construct the dose reconstructions for these deserving workers.

Chairman NORWOOD. Are you saying to me that—I am using my example. Are you saying to me that all 300 workers could potentially have different amounts of radiation, and it is very hard to determine—in other words, they cannot be grouped together as a group?

Dr. HOWARD. Yes, sir.

Chairman NORWOOD. Were you saying they are grouped together as a group? If one claimant at SRS is entitled to benefits because of what has happened over the past 25 years and considering what you do and do not know, does that mean all 300 of them are entitled?

Dr. HOWARD. I think the value that we see with the technical basis documents, doing a survey of the entire site, figuring out historically what doses have occurred in terms of the site and where employees are, the technical basis document will largely help us through that process. We see that as an important addition to the dose reconstruction process.

Chairman NORWOOD. My time has expired. I will get back to this shortly. Mrs. Blackburn, we welcome you. You have not had any time for questions. You do now. You are recognized for 5 minutes.

Mrs. BLACKBURN. Thank you, Mr. Chairman. I want to thank all of you for your testimony, and for the opportunity to listen to you today, but also to talk with you. I hope it is the beginning of a dialog.

In my district, Tennessee's 7th Congressional District, we have a spot, and from 1949 to 1965, at the Clarksville Modification Center, they tested and modified the components of nuclear weapons. Dr. Howard, I can see you are nodding your head. I am sure you are familiar with this.

Throughout the course of its operations, hundreds of workers were exposed to beryllium, and there have been many cancer cases as a result. My constituents worked at this facility over 40 years ago, and because their work was classified, there are very few

records that provide the documentation that you all deem necessary for them to receive compensation.

I understand that a person can receive compensation through the Department of Labor without having worked for a special exposure cohort, but that it is difficult, and it is hard to provide the documentation that you require.

According to DOL stats, people who worked at the Clarksville facility have filed over 300 claims, and not one of these claims has been approved. I am trying to figure out, sitting here listening to you all and listening to the example from the Savannah River case—what I am trying to do, and you all bear with me now, because I am a freshman, this is my first year here, but I want to figure out why my constituents' cases have not been approved, and what we need to do so that these workers can receive the compensation they deserve.

I would like to know how many claims has DOL approved for an individual who did not work at a special exposure cohort, and also, Mr. Hallmark, you used the figure on your handout of total number of cases, 36,597. Are my constituents' cases included in that number of total cases that have been presented to you all, but not resolved?

The other thing I would like to know is how many other places like the bird cage in Clarksville, Tennessee do we have here in the United States?

Mr. HALLMARK. There are a number of questions there.

Mrs. BLACKBURN. Yes, sir, it is. I am a patient person. I will wait for those answers.

Mr. HALLMARK. First of all, the 36,000 cases, I believe, is all of the cases that we have received from all over the country.

Mrs. BLACKBURN. That would include those from the bird cage?

Mr. HALLMARK. That would include yours. I do not have the exact number for the Clarksville site, although I noted there were—

Mrs. BLACKBURN. About 350.

Mr. HALLMARK.—quite a number from your district specifically. We are able to take beryllium cases to closure. They are in that group of four types of claims that I explained in my talk, that we can take directly to recommended decision, that do not require a NIOSH review.

I know a number of cases have been approved for employees in your district. Mr. Tersick, who is the director of the energy program for us, just handed me this document which shows 21 payments for residents in your district. They may not all have worked at the Clarksville facility, because the residents could have been someplace else.

Beryllium cases have been taken to closure. You may have seen a number of cases denied because individuals have filed a claim with us under Part B which really should have been filed under Part D.

That is an individual who had, let's say, an asbestosis or other pulmonary condition not related to beryllium. Those claims are not eligible for coverage under the Part B program. They are eligible for consideration under the Part D program that the Department of Energy runs.

Of the cases that we have denied, roughly two-thirds fall into that category. They are simply, really, people who came through the wrong door.

With regard to beryllium cases, we are moving on those. I do not believe there is a significant backlog. Obviously, not everyone who presents a claim that they had a beryllium condition will be able to in fact prevail. They may not be able to show there is documentary evidence that their particular medical condition was generated by beryllium.

If we have a diagnosis, if someone meets the test, which involves specific kinds of tests for beryllium sensitivity and disease, then their claim would be approved.

Mrs. BLACKBURN. Thank you, sir.

Dr. HOWARD. We have 51 claims for dose reconstruction from the Clarksville facility that we have, sent from DOL. Those are moving through our system. Our technical basis document or site survey for the Clarksville facility will be completed in December, and then those claims will move through our system fairly quickly.

Chairman NORWOOD. Dr. Howard, do you have to have cancer or have been diagnosed with another disease to be a claimant?

Dr. HOWARD. I think as Mr. Hallmark reported, the cancer is what we—we reconstruct doses for cancer. For beryllium exposure, which results in a pulmonary or lung disease, those do not come to us under Part B. We only do the dose reconstruction to determine the relationship to cancer.

Chairman NORWOOD. Any of those that you deal with must have been diagnosed with cancer before they can legitimately be a claimant?

Mr. HALLMARK. Right. The two tests are the covered employment at one of the sites, and as Congresswoman Blackburn indicated, there are 324 or so sites all over the country that are involved here. You have to have worked at one of those sites during the period of time when nuclear weapons were being produced, tested, or maintained, and you have to have a diagnosis for one of the diseases that we cover, one being cancer, one being beryllium disease, and the last being silicosis, which only applies to miners who were involved in tunneling for the test areas in Nevada and Amchitka.

Chairman NORWOOD. We have 36,000 Americans diagnosed with cancer or another disease?

Mr. HALLMARK. 36,000 employees have had a claim filed. That does not mean they were diagnosed, necessarily. A number of them filed a claim who had a diagnosis that would not match one of the three that I have mentioned. Those are the ones that really should have gone to the other program that the Department of Energy runs.

Chairman NORWOOD. Mr. Owens, we are into the second round. You are recognized for 5 minutes.

Mr. OWENS. While you are on the subject of numbers, can we assume that everybody who might possibly be eligible for this program has been reached? How much money has DOL spent by state on outreach? Has it done any outreach in connection with this program?

Mr. HALLMARK. I cannot give you a dollar figure by state, certainly, but I know we have spent several million dollars each fiscal

year on outreach. Part of it is for the resource centers that we opened in the ten sites. Also, for the traveling resource centers, which, notwithstanding your correspondent, are a little bit more than a person in a hotel room with a phone, and we have done town hall meetings. We have done roughly 600 public meetings around the country in places where we thought there would be people who might need to know about this program.

Each time we do one of those programs, we do press releases. We contact the local media. We talk to the local delegations, congressional delegations, to make sure that we get as much information out in that area as we can.

Mr. OWENS. For the record, can we get from you later on a more detailed statement as to how the outreach has been conducted state by state?

Mr. HALLMARK. Absolutely. I believe, as a matter of fact, Congressman, that we have an event going on right now in the Buffalo/Niagara area. I think we had an event up there this week.

Mr. OWENS. For those individuals who come through the wrong door or they come to door B when they should be going to D, what do they have to do, go back and start from the bottom of the hill? How long does it take to process someone who has already started the process but they happened to be in D instead of B or B instead of D? Do they have to wait 10 years to come back, like immigration?

Mr. HALLMARK. In fact, many of those individuals have filed the claim both ways. An individual can actually draw benefits from both programs simultaneously. Normally, if a person comes to us with a condition that may or may not be covered under Part B, they will have been advised to have filed both ways simultaneously so their case is already at the Department of Energy, as well.

Mr. OWENS. You just said a lot of people have been turned down, had their claims processed and delayed, because they were in the wrong category.

Mr. HALLMARK. I said they were denied. Most of the denials that we have made have been of that category, people who were really eligible or potentially eligible to be processed in Part D.

In each case, as we make that determination, you do not fall within one of the conditions that we cover, we advise the claimant that you may need to go to the Department of Energy if you have not already done that.

Mr. OWENS. They have to go and start all over?

Mr. HALLMARK. If they have not already filed, then they would start with DOE's program.

Mr. ELISBURG. Mr. Owens, the fact of the matter is that the way the Department of Energy processes, trying to take the first in, first out process, you could in fact spend several years dealing with the Department of Labor, and then have to go back to ground zero, start again, and go through some years before the Department of Energy would get around to you. That is one of the unfortunate parts of the difficulty of this program for the claimants.

If they get into the wrong pew here or the wrong queue, they are in deep trouble.

Mr. HALLMARK. Excuse me. I would like to point out that our resource centers do attempt to give people information about those

different options at the front end. That is one of the reasons why we jointly operate those resource centers with the Department of Energy, because the pool of claimants is shared, and people need to get information about both paths.

Mr. OWENS. 36,597 have filed already. Is there any way you can estimate what the total eligible number is going to be? Do we have some kind of sense or a way of calculating what it is likely to be?

Mr. HALLMARK. We had anticipated that by the first 2 years of the program, there would be as many as 80,000 claims filed. The actual receipts are about 60 percent of what we thought. Part of that is because we don't believe we have done good enough outreach in areas like Hanford, and that is why we want to make an emphasis about that, because we think there are a number of individuals who have not come forward who probably should and could.

Mr. OWENS. The algorithms and the cohort scrutiny, it just seems that there is a spirit here of trying to detect fraud. You are moving so slowly, and so many people have to wait so long. What is the reason for what looks like cruel and inhuman punishment by civil servants, bureaucrats, who administer the program? Why is this caution and these complicated formulas so necessary? When can workers in the following areas expect to have their claims completed through both NIOSH and DOL? This is a question that you cannot answer now, but I would like to have it submitted for the record.

Rocky Flats; Iowa Ordnance plant; Idaho National Lab; Fernald; Los Alamos; Nevada test site; Oak Ridge; Niagara Falls; just a few. I think I would like to know when, in the implementation of this, we can expect that to happen.

Mr. HALLMARK. If I could respond in general to your comment, Congressman Owens, as I indicated earlier, I do not believe there is an expectation on the part of any of the agencies involved that fraud is a significant issue or a serious concern that we are focused on.

Mr. OWENS. In the algorithm, they say they want to make sure the radiation was a problem, and the person was exposed while they were on duty. That implies they are worried about people who will come in and they got radiation great enough to cause cancer while they were off duty or somewhere else, and they are trying to blame it on the exposure at the work site.

Mr. HALLMARK. I believe that is driven directly by what the statute requires us to do, but the complexity and the delay that has been introduced is because determining whether a cancer was caused or not caused by radiation is a highly complex undertaking, and there is no marker, a given cancer does not have a marker, showing this was caused by radiation or not.

Mr. OWENS. Is that common knowledge, that radiation is a major cause of cancer?

Mr. HALLMARK. It is a cause.

Mr. OWENS. A major cause.

Mr. HALLMARK. It is a probabilistic determination. There is no way to tell that a particular cancer was caused or not caused by radiation. That is why we have the very complex process of dose reconstruction. That is why we have this statistical determination of probability of causation, which we use, and which is what—

Mr. OWENS. One case was cited where the person had cancer of the throat instead of cancer of the esophagus, and they were told it was cancer of the esophagus that makes them eligible, but cancer of the throat does not. Do we have that kind of science which can peg the radiation doses to the DNA of the person, people exposed that would respond to any outside phenomena based on something inside them, so you have a variety of responses, but cancer is cancer?

Mr. HALLMARK. Cancer in this instance is not cancer, Congressman. The Congress set up in establishing the special exposure cohort a list of specified cancers.

Mr. OWENS. For instance, esophagus?

Mr. HALLMARK. Yes.

Mr. OWENS. Congress set that up?

Mr. HALLMARK. Congress did. Some cancers are on that list and some are not. That is in fact what we have to follow, is the congressional—

Mr. OWENS. Does science think Congress acted properly there, or would science question that kind of labeling?

Mr. HALLMARK. I would defer to the scientists.

Mr. OWENS. Dr. Howard?

Dr. HOWARD. If I am a physician and I see a patient with cancer, my job is to treat them, not figure out exactly how they got there. In a compensation program, that issue is extremely important. If your cancer is work-related from your job, then you get compensation. Cancer causation is multi-factorial, and even an individual with radiation exposure, there are other causes.

For lung cancer, smoking, for instance, is a significant cause of cancer. Radiation may be there. Radon bubbling up from people's floors in certain parts of the country is a radiation exposure, but it is not work-related.

The cancer causation, as Mr. Hallmark said, is probabilistic based on the cause. It is a difficult science.

Mr. OWENS. A 32-year-old man could be exposed to enough radon from his basement to—

Dr. HOWARD. No, but there may be genetic cases in his family because early familial colon cancer occurs. As I say, there are multi-factorial—

Mr. OWENS. Mr. Elisburg, would you care to comment?

Mr. ELISBURG. When this legislation was first being proposed in the last administration, a number of us went to the various elected officials and appointed officials and said, look, do not do this if you are not going to pay. Do not put people to this test if you are not going to see that they get paid for what happened to them when they went to work.

When Congress finally passed this Act and they put the special exposure cohorts in for people, as you know, the process by which this bill was put together was a bit imperfect and a bit, perhaps, speedy. There are some edges to it, such as I think the difference between the throat and the esophagus, that perhaps could be fixed, and I think some of those, NIOSH was trying to fix in its proposal for getting into the special exposure cohorts, but the fact of the matter is they did set up some presumptions, and those presumptions are working fairly well.

What has happened, of course, is that for those areas where there are no presumptions, what is happening is exactly what we had all hoped would not happen, that the scientists are trying to right a deed here. They are trying to ask workers to prove things that they have no ability to prove, and the agencies themselves have no way to really establish with the exposure levels and what was or was not a cancer.

I think our view is if you worked at these facilities and you became ill with one of these diseases, it is the obligation of the government to make you whole, or at least to compensate you. They cannot make you whole.

Having people go through these hoops, multiple hoops, does not really get to the point that I think Congress was talking about when they said people worked here for many decades, they got sick, they should be taken care of.

Mr. OWENS. Thank you. I think I am out of time, Mr. Chairman.

Chairman NORWOOD. We will start to conclude, but Mr. Owens has a lot of questions he would like to submit, and so do I.

I find this is a very difficult situation. Congress, I think, very clearly said that people who have been injured on these work sites should be compensated. I totally agree with that. I think Congress also said, by the way, we do not care for you to compensate people that it is not justified for, so you are caught in the middle there trying to—if you start paying out millions and millions of dollars to people who really have not been injured, we are going to have you right back raising hell about that. You are darned if you do and darned if you do not.

My concern about this is that the people in all of our districts who have served the country as well as anyone and as well as the military, certainly should be compensated if they have been made sick, whatever, from this work position.

We are here to say we hope you will speed this process up. We would like to get fruition. We hope you do not deny anybody that should not be denied.

Part of my concern is this came into being in the year 2000. I do not presume you had the scientists in NIOSH sitting there ready to tackle this. I presume that it takes a fairly high level of expertise to try to do what Congress asked you to do, and I presume you have been working over the last two and a half years to get ready so you can do it and do it as fast as you can.

I want us, as Congress, to be a little careful that we do not throw all that past effort out now that you are on the verge of actually producing at a larger rate right here at the time that we should be able to accomplish this goal.

I am very concerned about amendments and different things that might shake this thing up and cause the people who are deserving to be compensated to have it delayed for another two or three or 4 years.

Mr. Hallmark, I am looking forward to some finality next year in some of our cases. I do not presume to speak as to who should or should not be compensated. I guess if you have 36,000 claims, just real quick, what percentage of that would be of the total workforce that have worked at these sites?

Mr. HALLMARK. We do not know the exact totals, because of sub-contractors and construction workers and others who are not necessarily known to us, but DOE estimated roughly 650,000. We think with the addition of the atomic weapons employers and beryllium vendors, it may be toward 700,000 or more, with construction workers.

It is a fairly large number. The 36,000 cases that we have so far represents perhaps 5 percent.

Chairman NORWOOD. It is legitimate for the taxpayer, and I am very curious, it falls into the category a little bit of ergonomics, why only 36,000? Is that because you have not been out there reminding people that this program is a program, and if you did that better, would it go up to 80,000? If it were just 80,000, why did this particular 80,000 end up having a disease and the other 575,000 not?

Those are questions that are very difficult to answer, and it makes the determination of the 80,000 or the 36,000 that do have disease—

Mr. OWENS. Will the gentleman yield for a minute?

Chairman NORWOOD. Certainly.

Mr. OWENS. You have to factor in there, too, how many are dead already.

Mr. HALLMARK. There are quite a number of the 700,000 I just mentioned, probably more than half are deceased.

Chairman NORWOOD. Their families can put in claims.

Mr. HALLMARK. They can, but they may be less likely to be knowledgeable about the program. That is why outreach is very important.

Chairman NORWOOD. There is still a small percentage that do have some disease and a large percentage do not. I would think that would slow the process down, and that you are trying to determine how to get to this.

I ask on behalf of Major Owens, I kept hearing him say he would like to make sure that it is well-known to employees what their rights are. If the number is 36,000 and it is anticipated it ought to be three times that or four times that, that means somebody is not being informed, and we encourage you to do that right away, and speed this process on.

I thank you all—

Mr. OWENS. Will the gentleman yield?

Chairman NORWOOD. I certainly will.

Mr. OWENS. One more critical question. Has there been any studies done of the 600,000 or 700,000 workers, those who have died and the causes of death? Any studies in existence now or being planned?

Mr. HALLMARK. There have been numerous studies done in these sites. NIOSH, I know, has done quite a number of exhaustive studies of a whole range of different events, and they may want to talk about it.

Dr. HOWARD. There is an enormous body of information, most of which came through since the secrecy was lifted, about the exposures to these workers, about the illness, about people dying from the various toxic exposures at these bomb factories.



Much of that formed the basis, I think, of Congress acting when they did a couple of years ago.

I just want to point out, Mr. Chairman, that the nature of this workforce is very important to understand that these were all people who worked in the most stringent security, most stringent secrecy. You could not have the lowest level jobs in these facilities without a Top Secret Q clearance. These were people who were really true patriots, who worked under circumstances where they for decades could not even tell their doctors what was happening to them.

That has some impact on kind of where the numbers really are, if you could delve back into that kind of ancient history.

Chairman NORWOOD. I do not know if it helps you any or not to know a lot of those people are my friends and neighbors. I do understand what you just said. That has been in my backyard all of my life. We have always appreciated the work that was being done over there. You are exactly right about what you just said.

Gentlemen, thank you for your testimony and your time. We are very grateful. It has been enlightening to the Committee. We will look forward to your answers.

We now stand adjourned.

[Whereupon, at 1:02 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

Claimant Statements submitted by Ranking Member Major Owens are available for inspection in the Committee permanent archive files.

*Bulletin of the Atomic Scientists*, July/August 2001, "A Debt Long Overdue," "The Burden of Proof," and "Making It Work" available for inspection in the Committee permanent archive files.

